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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

12 CV 1422 (JSR)

6 BANK OF AMERICA CORPORATION,
7 *successor to Countrywide*
8 *Financial Corporation,*
9 *Countrywide Home Loans, Inc.,*
and Full Spectrum Lending, et
al.,

10 Defendants.

11 -----x

New York, N.Y.
September 27, 2013
9:45 a.m.

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13 Before:

14 HON. JED S. RAKOFF,

15 District Judge
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(In open court; jury present)

THE COURT: Good morning, ladies and gentlemen. Thank you for your promptness. I was a little late this morning, and after giving you such a hard time, I thought maybe I should hold myself in contempt of court. I considered that judiciously, but then I made a mercy pitch to myself on my behalf that was so moving, that I decided to let myself off the hook this time. But I'm sorry for the delay.

We're ready to continue, counsel.

EDWARD O'DONNELL,

called as a witness by the Government,

having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MS. NAWADAY:

Q. Good morning, Mr. O'Donnell.

A. Good morning.

Q. Yesterday we were talking about the NCA work flow, and I had forgotten to ask you, was there any one person in charge of the NCA work flow?

A. The NCA organization reported to Rebecca Mairone.

Q. Let's shift gears to talk about compensation issues now. Do you have an understanding of how loan specialists were compensated in 2007 before the Hustle pilot?

A. Yes. Although they didn't report for me, I was aware of how they were compensated. Loan specialists basically earn a

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1 base salary, and then they could also earn incentive bonuses
2 based on the number of loans that they were involved in
3 funding.

4 Q. Was there any quality component to a loan specialist's
5 compensation?

6 A. There was. All areas of Full Spectrum had quality
7 components in their compensation.

8 Q. Was there a name for that quality component?

9 A. It was called quality of grade.

10 Q. Can you explain to us how quality of grade affected
11 compensation?

12 A. If a loan specialist in this case made mistakes on their
13 loan and they were identified in an audit after the loan had
14 funded, there would be subtractions from a score. Everyone
15 started just very simply with a baseline score of a four. And
16 four was kind of the perfect score. If you made errors, then
17 there could be deductions from the four that would impact your
18 bonus compensation.

19 Q. Did there come a time in 2007 when the quality of grade
20 component changed in some way?

21 A. In the pilot in 2007 the QoG, quality of grade, impacts
22 were suspended.

23 Q. Could you explain what that meant?

24 A. It basically meant that if loans were identified with
25 problems or issues that made them not investment quality, then

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1 there wouldn't be any impact to the loan specialist's bonus.
2 They'd get their full bonus.

3 Q. When did this change occur?

4 A. It was done in conjunction with the test or the pilot we
5 rolled out for the Hustle.

6 Q. Do you have an understanding of the reason for that change?

7 A. We recognized that it was a new work flow, and that for a
8 couple months, short period of time, we were going to be
9 testing that pilot. And we didn't want the small number of
10 employees that were involved in it to be negatively impacted.

11 Because we recognized we could have made errors or
12 misassumptions in how that work flow would play out.

13 Q. Were there any other changes to loan specialists'
14 compensation around August of 2007?

15 A. The QoG was later -- the suspension of the impact of the
16 QoG was later expanded company wide.

17 Q. Fixing your attention on August of 2007. Were there any
18 other compensation changes that applied to loan specialists in
19 or around August of 2007?

20 A. There were. Outside the pilot as well, loan specialists
21 were given production goals, so there was an extra bonus that
22 would be earned if the company hit certain levels of funding.
23 There was also what we refer to as a wrapper around the bonus,
24 which was related to turn time. So, the greater percentage of
25 loans that funded more quickly, people could earn more

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1 compensation if that was achieved.

2 Q. I want to separate out the different components of your
3 answer. Could you explain separately -- you've explained the
4 funding bonus. Can you explain what you meant by the turn time
5 bonus?

6 A. In the simplest form, the faster the loan funds, the more
7 money would be paid in bonus.

8 Q. Mr. O'Donnell, could you turn in your binder to tab 31.

9 A. Okay.

10 Q. Do you recognize this document?

11 A. I do.

12 MS. NAWADAY: Your Honor, I believe there is no
13 objection to this exhibit so we would offer it in evidence.

14 MS. MAINIGI: No objection.

15 THE COURT: Is that right?

16 MS. MAINIGI: No objection.

17 MR. HEFTER: No objection, your Honor.

18 THE COURT: Received.

19 (Plaintiff's Exhibit 31 received in evidence)

20 Q. Mr. O'Donnell, could you explain to us what this is.

21 A. This is an announcement from the compensation management
22 group, which was part of our human resources and finance
23 groups. It is announcing the turn time modifier to monthly
24 bonus pilots.

25 Q. Turn to tab 266 in your binder. Do you recognize that

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1 document?

2 A. I do. It is an e-mail from me.

3 MS. NAWADAY: I believe there is no objection to this
4 exhibit so we offer it into evidence.

5 MS. MAINIGI: No objection.

6 MR. HEFTER: No objection, your Honor.

7 THE COURT: Received.

8 (Plaintiff's Exhibit 266 received in evidence)

9 Q. Mr. O'Donnell, could you tell us what this document is?

10 A. This is an e-mail that I wrote at the very beginning of
11 August in 2007 announcing changes to the compensation plan for
12 central services, specifically the incentive plans. Central
13 services was the group I managed in underwriting and funding.

14 Q. Can I direct your attention to page two of the document,
15 and can we blow up the first full paragraph that begins
16 "enhancement opportunity."

17 Mr. O'Donnell, can you read that for the jury.

18 A. "Enhancement opportunity. If we fund \$3.1 billion or
19 higher, and prime funding volume is 2.6 or higher, an
20 additional 25 percent bonus will take place. If the total
21 fundings are \$3.1 billion or higher but prime funding volume is
22 less than \$2.6 billion, an additional 10 percent bonus will be
23 paid."

24 Q. Thank you. I note that you are the author of this e-mail,
25 correct?

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1 A. I am.

2 Q. Were you the person responsible for putting in place the
3 funding bonus?

4 A. No. In this e-mail I'm announcing the bonus, but I did not
5 have authority to rollout new compensation plans.

6 Q. Who did have that authority?

7 A. Compensation plans had to be approved through our CFO and
8 ultimately Greg Lumsden.

9 Q. Mr. O'Donnell, did anyone express concerns to you about the
10 compensation changes you just described?

11 A. They did. My direct reports and others expressed concerns.

12 Q. Who in particular among your direct reports?

13 A. Jim White who ran the Chandler, Arizona fulfillment center;
14 Robert Price, who ran Richardson, Texas; David Sallis, who ran
15 Chicago, Illinois.

16 Q. Let let's start with Mr. Price. What did he tell you?

17 MR. HEFTER: Objection, your Honor, as to Ms. Mairone.

18 THE COURT: Come to the side bar.

19 (Continued on next page)

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1 (At the side bar)

2 THE COURT: So you were going to tell me this morning
3 which of the options you elected, although you will recall I
4 did give the jury a general overview yesterday.

5 MR. HEFTER: I apologize, your Honor.

6 THE COURT: Go ahead.

7 MR. HEFTER: I said you did. I remember that.

8 THE COURT: So now, are you going to object each time
9 or do you want a continuing objection or what do you want?

10 MR. HEFTER: Could we have 10 seconds to confer, your
11 Honor?

12 THE COURT: Yes.

13 (Pause)

14 MR. HEFTER: Your Honor, I think we'll do it for now
15 on a case-by-case basis.

16 THE COURT: Okay. Now, on a separate matter, I
17 received just now from my courtroom deputy, as the jury was
18 coming in, a note was received which we've marked as Juror Note
19 Number 2, but it's from Mr. Chinchar, Juror Number 10. "There
20 was a man in the courtroom yesterday who I later saw at lunch"
21 and I can't quite make out the next word but it looks like
22 "bringing with him a professional large camera. At the end of
23 the day, he followed Juror Number 2 and I as we left the
24 building after giving us a slight grin as we came through the
25 door. I turned to look at him and stopped and he stopped

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1 following us. In addition, I saw that defense was checking on
2 me on social media. I feel intimidated and don't feel I could
3 be objective."

4 MS. MAINIGI: We did do jury research at the time,
5 your Honor.

6 THE COURT: I gave you permission to do jury research
7 when we were choosing the jury.

8 MS. MAINIGI: And as far as I understand, that's what
9 we did, your Honor. I don't know --

10 THE COURT: Has someone been hired by you to take
11 pictures of the jurors?

12 MR. HEFTER: No.

13 MS. MAINIGI: I saw the same gentleman when we were
14 leaving.

15 THE COURT: Is he in the courtroom now?

16 MS. MAINIGI: I don't believe so. No. No --

17 THE COURT: I'm going to want to have a full inquiry
18 about this of every single lawyer who was here yesterday at the
19 next break.

20 (Continued on next page)

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1 (In open court)

2 THE COURT: So, this evidence will be received as to
3 the banks but not as to Ms. Mairone.

4 BY MS. NAWADAY:

5 Q. Mr. O'Donnell, what did Mr. Price tell you?

6 A. Mr. Price was concerned that in this announcement of the
7 updated central services incentive plans there was no mention
8 of quality. It was purely about the funding volume of loans.

9 Q. When did he tell you this?

10 A. Robert -- it was immediately after I published this note.
11 Robert and I office next door to each other in Richardson, and
12 he frequently -- too frequently sometimes -- spent time in my
13 office airing his concerns and complaints. But I asked him to
14 get feedback as I did with my other center managers to my note,
15 so that I could understand what specifically he and others were
16 concerned about.

17 Q. How did you ask him to gather feedback?

18 A. They had floor meetings with their staff. Generally when
19 we had large announcements, the center manager or the team
20 managers would gather the staff together and review the changes
21 or details that we were sharing.

22 Q. You also mentioned Mr. White expressed concerns to you, is
23 that right?

24 A. He did.

25 Q. What did he say to you?

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1 A. Mr. White sent me an e-mail outlining his concerns that he
2 was interpreting my note to mean that it was only about
3 funding, and that quality didn't matter. He was making that
4 question, does quality still matter. He was concerned that
5 people could interpret this the wrong way. And wanted to
6 understand what we were going to do to make sure that quality
7 wasn't jeopardized.

8 Q. What, if anything, did you say in response?

9 A. I told him I heard his concerns, and I asked him to do the
10 same as I had asked Robert. Talk to the staff, get the
11 feedback, and then let's talk.

12 Q. Did anyone else express concerns to you?

13 A. David Sallis who ran the Chicago operation.

14 Q. What did he say?

15 A. David had the same concern, that he was confused by the
16 memo. He thought it was unusual that we would have an
17 announcement for only the central services group. He had
18 talked to people in production, the sales operations that he
19 supported, and they had not received any such memo. So he was
20 concerned that a bonus for volume was only being given to
21 underwriters and funders.

22 Q. Did you pass along this feedback to anyone else?

23 A. I did.

24 Q. Who did you pass it along to?

25 A. I passed it along in an e-mail to Rebecca Mairone with a

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1 copy to my boss Cliff Kitashima.

2 Q. Did Ms. Mairone respond to your e-mail?

3 A. She did.

4 Q. What did she say?

5 A. Her response confused me a bit. I had -- I had organized
6 the questions that I received from my staff in four or five
7 different areas. And I think I even noted in the e-mail that I
8 didn't apply much of a filter. I didn't put people's names in.
9 Generally my practice was to be the one to carry the message
10 and not single folks out who were raising concerns.

11 But she didn't address any of my specific concerns.
12 And she interpreted it as feedback that it sounded like the
13 staff was on board and this might work.

14 Q. Can I --

15 MR. HEFTER: I move to strike as non-responsive.

16 THE COURT: Sustained. The jury will disregard the
17 last answer. Please listen carefully to the question. Only
18 answer the question put.

19 THE WITNESS: Yes, sir.

20 Q. Mr. O'Donnell, can you turn in your binder to tab 52.

21 A. Okay.

22 Q. Again without getting into the substance, if I can direct
23 your attention to halfway down the first page. Do you
24 recognize this document?

25 A. I do.

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1 MS. NAWADAY: Your Honor, I believe there is no
2 objection to this exhibit so we offer it into evidence.

3 THE COURT: You don't need to keep saying that. All
4 you need to say is we offer exhibit whatever the number is and
5 then we'll find out if there is any objection.

6 MS. NAWADAY: Understood, your Honor.

7 THE COURT: What is the exhibit number?

8 MS. NAWADAY: 52.

9 THE COURT: Any objection?

10 MS. MAINIGI: Your Honor, we have an objection just to
11 one part of it. It is on the second page.

12 THE COURT: Is this objection noted in the pretrial
13 order?

14 MS. MAINIGI: I believe it is, your Honor. There is
15 an objection, your Honor.

16 THE COURT: Okay. By paragraph or --

17 MS. MAINIGI: Just the second page, your Honor, the
18 page marked two at the bottom and just the second half of that
19 e-mail.

20 THE COURT: Yes. And the ground is?

21 MS. MAINIGI: Hearsay, your Honor.

22 THE COURT: Yes. But why isn't this an ordinary
23 business record?

24 MS. MAINIGI: Your Honor, I think -- may I approach?

25 THE COURT: Yes.

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1 (At the side bar)

2 THE COURT: So that the record is clear, what we have
3 first is an e-mail from Mr. O'Donnell to Ms. Mairone, then a
4 response from Ms. Mairone which would make no sense if you
5 didn't see the e-mail from Mr. O'Donnell to begin with. And
6 then there is some further shorter e-mails about all this.

7 So, my question is first, why doesn't it come in in
8 order to make sense of Ms. Mairone's e-mail? And independent
9 of that, why isn't this an ordinary business record?

10 MS. MAINIGI: Your Honor, we objected, it was one of
11 the few documents we objected to out of being an ordinary
12 business record because of the compilation of comments here,
13 it's unclear who said these comments to Mr. O'Donnell. So we
14 understand the general position with respect to the party
15 opponents as well as the business records.

16 THE COURT: So just again so the record is clear, he
17 was apparently asked by Ms. Mairone to provide her with an
18 update on meetings that the SVPs had with their management team
19 as well as other employees, all with respect to the program
20 that was coming into play.

21 He reported back what the various employees had to
22 say. That included, of course, what would otherwise be hearsay
23 statements.

24 First, before you even get to business record, all of
25 these are statements of employees of the banks in the course of

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1 their business. So, I think on that ground alone they're not
2 hearsay. But secondly, this is clearly being done as part of
3 the ordinary business of the banks as well as it's basically a
4 fact gathering process that he was undertaking as an employee
5 as directed, and as directed by Ms. Mairone no less.

6 And then, putting all that aside, this would at a
7 minimum be relevant to what was in Ms. Mairone's head, and her
8 intent is of course very much an element of the case, and the
9 bank's intent as well. And, there would be no meaning to the
10 rest of the exhibit, to which no objection was lodged, if you
11 didn't have this initial e-mail from Mr. O'Donnell. So, the
12 objection is overruled.

13 MR. HEFTER: Can I just make one point on the
14 document, your Honor. And I don't think the document actually
15 implies that Ms. Mairone directed Mr. O'Donnell, but that's
16 neither here nor there.

17 THE COURT: I think you can argue it does, but I agree
18 it is not critical to the point.

19 MR. HEFTER: The other thing is with respect to the
20 top document between Ms. Mairone and Mr. Lumsden, I have no
21 idea what the government intends to ask Mr. O'Donnell about
22 that.

23 MS. NAWADAY: I don't intend to ask him anything.

24 MR. HEFTER: You can imagine my lack of foundation
25 objection that would be coming.

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1 (In open court)

2 THE COURT: 52 is received.

3 (Plaintiff's Exhibit 52 received in evidence)

4 Q. Mr. O'Donnell, I'd like to direct your attention to the
5 second page of this document. First, is this the e-mail that
6 you were describing a minute ago in which you gathered
7 feedback?

8 A. This is the e-mail that I wrote to Rebecca and carboned
9 Cliff.

10 MS. NAWADAY: If we can blow up the two paragraphs,
11 the second and third paragraph of that e-mail.

12 Q. Mr. O'Donnell, can you please read for us the blown up
13 portion beginning with "I've gathered feedback."

14 A. "I've gathered feedback from each of the respective groups
15 and have summarized the main themes below. Quality: The
16 number one question was about quality. 'Does the freeze of QoG
17 and the request to move loans mean we no longer care about
18 quality?' 'Should I be worried that we are trying to get more
19 aggressive when we read that companies can't sell loans and are
20 closing as a result?' 'Mr. Sambol just wrote us about the
21 importance of making good loans. How does this fit with his
22 comments?' 'What are the boundaries, is it just fund
23 everything and worry about it later?' 'Will I get an SUS from
24 corporate when there are defaults or the loan can't be sold and
25 how will that impact my job or my comp?'"

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1 Q. Thank you. Can you remind us what an SUS is referred to in
2 that paragraph?

3 A. An SUS would be a loan that had been rated as
4 non-investment quality by our corporate QC group after
5 completing a post-funding audit.

6 Q. Do you know who the Mr. Sambol who is referred to in that
7 paragraph?

8 A. Mr. Sambol was one of the top executives at Countrywide.

9 Q. Did Ms. Mairone respond to your e-mail?

10 A. She did.

11 Q. Can we turn to the first page of the document and blow up
12 the last sentence on the first page. Ms. Mairone responded to
13 you "So it sounds like it may work. Is that what I'm hearing?"

14 A. Yes.

15 Q. Did you agree with her interpretation of the feedback?

16 A. No.

17 Q. Why not?

18 A. I was confused by this answer. I had heard concerns from
19 the people that worked for me about the program that was being
20 rolled out relating to incentive comp. And I didn't think she
21 was understanding what I was saying. That, the questions that
22 were raising were the people that are in charge of underwriting
23 and funding loans, think we're sending them a message that
24 quality doesn't matter.

25 Q. Did you have any other discussions with Ms. Mairone about

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1 this e-mail?

2 A. I don't recall whether I did or not.

3 Q. Now focusing specifically on the Hustle pilot. Did anyone
4 express concerns to you about the Hustle pilot?

5 A. They did.

6 Q. Who in particular raised concerns?

7 A. My direct reports, Jim White, Robert Price, and David
8 Sallis.

9 Q. Anyone else?

10 A. Michael Thomas who also worked for me on the data and
11 metrics side. Other people that worked in Cliff's
12 organization. Patrick Aliano specifically, Patrick had
13 responsibility for sort of our secondary marketing and
14 interaction with corporate risk management.

15 Q. Let's start with Mr. Aliano. When did he express concern
16 to you?

17 A. He had heard about the pilot that we were building, the
18 steering committee in the discussions. So July of 2007 when
19 those conversations were starting, I met with Patrick as a
20 regular course of my interactions in Pasadena when I visited,
21 and he expressed concern and asked about the direction of the
22 prime loans.

23 MR. HEFTER: I move to strike as non-responsive as
24 well as the -- at least the last part of it.

25 THE COURT: I think this was reasonably responsive.

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1 Overruled.

2 Q. What, if anything, did you say in response to Mr. Aliano?

3 A. I told him to share his concerns with me more directly, and
4 I would take those messages to the steering committee and to
5 our boss. He also worked for Cliff.

6 Q. Did you pass along his concerns?

7 A. I did.

8 Q. To whom to?

9 A. Mr. Kitashima and also to members of the steering
10 committee.

11 Q. Did you express his concerns in a steering committee
12 meeting or to particular individuals in the steering committee?

13 A. In the steering committee meeting and also in individual
14 interactions with Mr. Kitashima.

15 Q. Did you express his concerns to anyone else in the steering
16 committee?

17 A. Yes. All the members that were present at the steering
18 committee meetings.

19 Q. So that would include Mr. Lumsden?

20 A. It would.

21 Q. What about Ms. Mairone?

22 A. It would.

23 Q. You also mentioned Robert Price. Again, what did Mr. Price
24 say to you?

25 A. Robert also had received feedback from his team and shared

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1 it with me. He was concerned about being asked to run the
2 pilot in Richardson. And what that meant to his career if the
3 loans weren't manufactured well.

4 Q. Did he express a particular concern about his career if the
5 loans turned out to be of poor quality?

6 MR. HEFTER: Objection. Leading.

7 THE COURT: Sustained.

8 Q. What concern specifically did Mr. Price express about his
9 career?

10 A. Mr. Price dealt more directly with the loan specialists
11 than I did. His teams interacted on a daily basis in
12 underwriting and in funding with individual loan specialists
13 that worked for the production or sales side of the house. And
14 he was concerned that they would not have the ability to
15 process loans and underwrite loans like an underwriter would.

16 Q. What were the concerns he expressed about his career?

17 A. Managers such as Robert were basically graded based on how
18 well the loans were audited that came out of their center. And
19 negative performance in terms of high SUS rates could impact
20 whether or not they could stay with the company.

21 Q. What did you say in response to Mr. Price?

22 A. I told him that he should trust the process we always used.
23 We were going to try a new process. There was a valid business
24 reason to do that. We would use metrics and data to monitor
25 what happened to quality and turn time and other goals

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1 associated with our move to a prime model. And I was confident
2 that we would adjust if things were out of kilter.

3 Q. Did anyone else express concerns to you about the Hustle
4 pilot?

5 A. In my visits to the individual underwriting and funding
6 centers line staff, so underwriters, funders, and the team
7 managers echoed the same concerns that they had given already
8 to their bosses to me about quality and about the message that
9 they had received in the note.

10 Q. I think you mentioned Mr. Thomas earlier. What did
11 Mr. Thomas express to you about the Hustle pilot?

12 MR. HEFTER: Objection, your Honor. Limiting
13 instruction, please.

14 THE COURT: This is received only as to the banks, not
15 as to Ms. Mairone.

16 A. Mr. Thomas was concerned with the pace of the change that
17 we were trying to implement. That this was a major model
18 shift, we were trying to do it very aggressively, very quickly,
19 and the changes were -- were really fluid.

20 Q. How did Mr. Thomas communicate that to you?

21 A. Michael did that both in e-mail and personally he officed
22 down the hall from me in Richardson and I met with him very
23 frequently.

24 Q. I think you also mentioned Mr. White previously.

25 A. Yes, Jim White who ran Chandler, Arizona.

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1 Q. What, if anything, did Mr. White say to you about the
2 Hustle pilot?

3 A. Jim was very --

4 MR. HEFTER: Same instruction, please.

5 THE COURT: Yes. Same instruction, ladies and
6 gentlemen.

7 A. Jim was very vocal. He had worked for me at a prior
8 company and we had a long-standing relationship. He felt
9 comfortable raising concerns to me. He told me directly that
10 he was very concerned about the message, the way it was
11 received by his staff, and he thought based on comments he had
12 heard, that people might start to believe there was a real
13 confidence about whether the company needed to fund loans
14 quickly to pay the bills.

15 Q. Did you pass along Mr. White's concerns to anyone else?

16 A. I did.

17 Q. To whom?

18 A. I passed them along in this e-mail, and also at the
19 steering committee, and in individual discussions with my boss.

20 Q. Did you pass along Mr. Price's concerns to anyone else?

21 A. I did.

22 Q. To whom?

23 A. They're part of this e-mail where I summarized the concerns
24 that I had received, and also to the steering committee, the
25 working group, and my boss.

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1 Q. Did you yourself have any concerns about the Hustle pilot?

2 A. I did.

3 Q. What were those?

4 A. There were, there were three primary concerns that I had.

5 The people that were going to be involved, number one, I was

6 concerned that the loan specialists wouldn't be up to the task.

7 Secondly, the pace, we were trying to make a major

8 model shift from a subprime company to a prime processing model

9 in a very heated market where loan quality was at a premium.

10 And then the third really was which products were we

11 talking about, what type of loans would be allowed to go

12 through this process. Would it really be only low risk loans

13 or would that subset be expanded to include a lot more.

14 Q. You referenced a concern about loan specialists being up to
15 the task. What did you mean by that?

16 A. I think I talked earlier about the fact that in our model,

17 loan specialists were really clerks. They did a good job of

18 gathering documents and talking to borrowers about basic

19 issues, but we had never asked them to make credit decisions or

20 act as an underwriter. And now we were about to ask them to do
21 that.

22 Q. Did you express your concern to anyone else?

23 A. I did.

24 Q. To whom?

25 A. I expressed my concern in the steering committee meetings

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O'DONNELL - DIRECT

1 and also to my boss Cliff Kitashima.

2 Q. You also referenced a concern about products. Can you
3 explain again what that was?

4 A. So there are a number of products in the prime side of the
5 business. That even though they're prime loans, they carry
6 various different levels of risk. Some are truly very unrisky
7 loans, for lack of a better term. The chance of a loan having
8 a problem is relatively low. But there are different types of
9 prime loans, and some carry larger risks than others.

10 Q. Did you pass along that concern to anyone else?

11 A. I did.

12 Q. Who did you pass along your concern to?

13 A. I passed that concern along to the members of our working
14 group, where we had a lot of discussion about which loans
15 should be in or not in the pilot, to my boss and also to
16 members of the steering committee.

17 Q. Did anyone respond to either of those concerns?

18 A. There was general discussion that we needed to test the
19 pilot. We needed to go forward with the pilot and allow the
20 process to be tested. And then figure out what we needed to
21 adjust.

22 Q. Did you ultimately approve moving forward with the pilot?

23 A. I gave a conditional approval on the pilot, and the
24 condition was that we would look at the loans as they came
25 through the pilot, determine what happened with the two basic

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O'DONNELL - DIRECT

1 goals. Speed and quality.

2 Q. What, if any, monitoring was done of Hustle loans during
3 the pilot?

4 A. One of the groups that reported to me was the quality
5 assurance group. That in conjunction with the pilot, they
6 looked at loans before and after they funded.

7 Q. Apart from the quality assurance reports, was there any
8 other reporting on Hustle loans during the pilot?

9 A. There was a standard kind of approach to reporting that we
10 used in Full Spectrum. We looked at, along with the quality of
11 the loan, we looked at the turn time, so how long it took to go
12 from application to funding. We looked at the individual
13 productivity of the employees, so how many loans did Johnny
14 fund, how many loans did Suzy have a part in funding. We
15 looked at what types of loans were funding and the particular
16 characteristics to make sure that what was going through the
17 High-Speed Swim Lane was really the type of loan that was
18 supposed to go through.

19 Q. What did the production reports show on the High-Speed Swim
20 Lane loans during the pilot?

21 A. They showed that the pilot was successful in helping loans
22 to move more quickly through the process as compared to our
23 prior model.

24 (Continued on next page)

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O'Donnell - direct

1 BY MS. NAWADAY:

2 Q. And how quickly were they moving?

3 A. I don't remember the exact number of days but it was deemed
4 a success based on the difference between our normal kind of
5 processing time and what we were getting through the Hustle.

6 Q. What was the normal processing time before the Hustle?

7 A. In the mid to high 20 days, 20 to 30 days to process a
8 prime to accept.

9 Q. What were the short-term goals for the Hustle?

10 A. The overarching goal was 15 days or less.

11 Q. Was that goal achieved?

12 A. It was.

13 Q. Turning now to the quality assurance reports, what
14 specifically were the quality assurance reports measuring?

15 A. They were measuring whether or not the loan would be
16 investment quality and whether the loans had funded under the
17 terms of the pilot.

18 Q. What do you mean whether they funded under the terms of the
19 pilot?

20 A. So did the loan processor follow the right steps to get the
21 loan through a manufacturing process, did they follow all the
22 right steps to follow the loan has been properly underwritten
23 and the conditions were cleared appropriately.

24 Q. Were quality assurance reports prepared at your direction?

25 A. They were.

D9RTBAN2

O'Donnell - direct

1 Q. What did the quality assurance reports show on Hustle
2 loans?

3 A. Unfortunately they showed that the process in terms of
4 managing the quality didn't work, that there was a very high
5 what we would call defect rate with the loans, which meant that
6 there was something materially wrong with the file.

7 Q. And did you share the quality assurance reports with anyone
8 else?

9 A. We did.

10 Q. Who did you share them with?

11 A. We shared those reports with the steering committee and the
12 working group, as well as the center managers and the team
13 managers and employees involved in the pilot.

14 Q. Mr. O'Donnell, could you please turn to tab 56 of your
15 binder. Do you recognize this document?

16 A. I do.

17 MS. NAWADAY: Your Honor, we offer Plaintiff's Exhibit
18 56 into evidence.

19 MS. MAINIGI: No objection, your Honor.

20 MR. HEFTER: No objection, your Honor.

21 THE COURT: Received.

22 (Plaintiff's Exhibit 56 received in evidence)

23 Q. Mr. O'Donnell, can you explain to us what this document is?

24 A. This is a document prepared by a group that reported to me,
25 the quality assurance group, and it's an overview of the

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O'Donnell - direct

1 quality assurance results, the audit results from loans that
2 went through the Hustle process.

3 Q. Do you know who prepared this document?

4 A. This would have been prepared by Don Harris.

5 Q. Do you see near the bottom of the page it says application
6 since August 13, 2007?

7 A. Yes.

8 Q. What, if any, significance is there that date?

9 A. That's the date that the Hustle was introduced.

10 Q. Can you explain to us what high risk means?

11 A. High risk in the scope of the QA audit meant that there was
12 defects on the loan that if they were not corrected, the loan
13 would likely be rated as severely unsat, so something
14 materially wrong with the loan.

15 Q. In the first sentence of the document there's a reference
16 to phase code three. Can you explain what that means?

17 A. Yes, we -- Full Spectrum, along with other divisions in
18 Countrywide, managed our pipeline by phases. Phase code three
19 was the phase where the loan had been cleared to close, so
20 whoever the underwriter or processor, loan specialist in this
21 case, had made a determination that this loan was OK to go to
22 the table and sign.

23 Q. So what, if any, steps in loan processing occur after phase
24 code three?

25 A. After phase code three, after a loan is cleared to close,

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O'Donnell - direct

1 the loan documents were drawn, the closing with the borrower
2 and the title company or their attorneys is scheduled, then
3 after -- we did a lot of refinance business, so it would be a
4 three-day waiting period, then the loan would fund.

5 Q. So the initial audit reviewed 42 loans for the Hustle
6 pilot, is that correct?

7 A. Yes.

8 Q. And 41 percent of them were found to be high risk?

9 A. Yes.

10 Q. How did that finding compare to what you had seen
11 historically in quality assurance reports?

12 A. It was significantly higher. Quality assurance results in
13 our normal process would have been probably more the six to
14 eight percent range.

15 Q. And what, if any, reaction did you have to this report?

16 A. I was very concerned.

17 Q. And did you share this report with anyone else?

18 A. I did. This report was shared with the steering committee,
19 the working group, the center managers Robert Price and Jim
20 White, who were involved in managing the pilot teams, and also
21 the individual team managers and employees that were involved.

22 Q. When did you share this report with them?

23 A. We did this type of reporting on a weekly basis.

24 Q. You did the reporting -- you distributed the reports on a
25 weekly basis?

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O'Donnell - direct

1 A. We completed the reports on a weekly basis, and if we
2 completed a report today, being Friday, then we would share the
3 report the following week with the teams involved.

4 Q. I'm trying to understand, how did you share the report, was
5 it by email or in the course of a meeting?

6 A. We would generally share it by email and have a conference
7 call and go over the results.

8 Q. Did you discuss this specific report on a conference call
9 with the steering committee?

10 A. We did.

11 Q. What, if any, reaction did the steering committee have with
12 the report?

13 A. People were concerned, but they wanted to have more time to
14 let people settle into their new roles and asked us to continue
15 to audit the loans, provide feedback. There was also a lot of
16 discussion about the process, so the QA process, and to some
17 extent a lot of criticism.

18 Q. And who in particular expressed criticism?

19 A. Members of the steering committee, Greg Lumsden, Rebecca
20 Mairone.

21 Q. And do you remember specifically what Mr. Lumsden said?

22 A. Mr. Lumsden was a difficult boss. I like Greg, but he was
23 difficult. And he always wanted us, he would say, to manage
24 the business an inch off the ground. So he wanted to
25 understand exactly what we are doing in the QA process,

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1 understand all the steps and what we were looking at, and how
2 that would equate to end quality.

3 Q. And do you remember anything specifically said by
4 Ms. Mairone?

5 A. Ms. Mairone was very focused on this, too. This was an
6 issue she was in charge of, and she was concerned about the QA
7 process as well. She voiced concern about sharing the results,
8 she voiced concern about how the auditors were looking at loans
9 and how we were determining which loans were high risk and
10 which were no risk or limited risk.

11 Q. Did you recommend any changes to the Hustle pilot to the
12 steering committee based on this report?

13 A. At this first stage, no, not at this first stage.

14 Q. Were any changes made to the Hustle pilot around the time
15 this report was distributed?

16 A. No, there were no changes.

17 Q. Did there come a time when there was a change to the Hustle
18 pilot?

19 A. After September when the pilot sort of concluded the
20 process, the Hustle process was rolled out across all of Full
21 Spectrum.

22 Q. What do you mean it was rolled out across all of Full
23 Spectrum?

24 A. It became the new model for processing loans.

25 Q. Did you support that change?

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O'Donnell - direct

1 A. I did not.

2 Q. Why not?

3 A. I was concerned that we had learned in the pilot that
4 quality had been negatively impacted. I wanted to continue the
5 pilot so that we could make adjustments to it before we made a
6 broader decision to roll it out everywhere.

7 Q. Were any changes made to it before it was rolled out
8 everywhere?

9 A. The only significant change is that more loans were allowed
10 into the process than had originally had been drawn up in the
11 pilot for test.

12 Q. What do you mean more loans were added?

13 A. Different types of loans, higher risk loans.

14 Q. Any particular types of loans that you recall that were
15 added?

16 A. Stated income type loans. There was a program that Fannie
17 Mae offered at the time called expanded approval, which is
18 their version of subprime loans, so they had lower FICO scores
19 and higher loan to value ratios, and those loans were added in
20 as well.

21 Q. Did you support adding the stated income loans into the
22 Hustle work flow?

23 A. No.

24 Q. Why not?

25 A. I was concerned, after seeing the pilot results, that loan

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O'Donnell - direct

1 specialists were not trained and prepared to make
2 determinations about what level of stated income was really
3 reasonable.

4 Q. And did you express that concern in meetings with the
5 steering committee?

6 A. I did.

7 Q. Did you support including expanded approval loans into the
8 Hustle work flow?

9 A. No, I did not.

10 Q. Why not?

11 A. For the same reason. The Hustle was supposed to be for low
12 risk loans, and we were now talking about loans that carried
13 nearly the same level risk as the subprime business that we
14 were moving away from.

15 Q. And why was it your view that expanded approval loans were
16 higher risk?

17 A. At one time in Full Spectrum we treated EA loans, expanded
18 approval loans, as subprime, and I equated them with subprime;
19 borrowers who had lower FICO scores, who had a history of
20 having trouble making payments on their mortgage or other
21 bills. They performed more like subprime loans than prime
22 loans. And the high-speed process, the fast check-out lane in
23 the grocery store was supposed to be for low risk.

24 Q. When the Hustle was rolled out across Full Spectrum, was
25 there a new role for underwriters in any way?

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O'Donnell - direct

1 A. The role for underwriters was diminished. They were only
2 used as an escalation point when loans either became CLUES
3 refers and were not eligible, or the loan specialist needed to
4 escalate that file based on their own determination and review.

5 Q. Can you remind us what a CLUES refer is?

6 A. CLUES refer is the output that comes from CLUES, which is
7 the automated underwriter. And it basically says that based on
8 the data that was put into the underwriting engine, it doesn't
9 look like the loan will fit the box or will be acceptable to an
10 investor as investment grade.

11 Q. Did the role of loan specialist change in any way in the
12 Hustle pilot when it was rolled out across Full Spectrum?

13 A. It did. It changed significantly. They were tasked with
14 underwriting, making credit decisions and engaging the entire
15 process. So from application to cleared to close they were in
16 charge of determining whether that loan was going to be made by
17 Full Spectrum or not.

18 Q. When the Hustle pilot was rolled out across Full Spectrum,
19 did it undergo any kind of a name change?

20 A. I don't remember if the program itself underwent a name
21 change, but the organization -- there was an organizational
22 change. The central services group that I had managed was
23 disbanded or changed dramatically, and a new organization was
24 set up to replace it called Central Fulfillment.

25 Q. What, if any, involvement did you have in the management of

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O'Donnell - direct

1 Central Fulfillment?

2 A. I didn't have any involvement in the day-to-day managing of
3 Central Fulfillment.

4 Q. Did you ever apply to have a managing position in Central
5 Fulfillment?

6 A. I did.

7 Q. Why did you apply for that position?

8 A. I thought it was kind of the natural progression for my
9 career. When I started at Full Spectrum I was hired as the
10 senior vice president of underwriting. I was promoted and took
11 over the funding operation as well, so at that time I had the
12 fulfillment responsibilities for the company. And now we were
13 changing the fulfillment model to add processing to that, and I
14 thought that my skills would be needed. I had led changes in
15 our model and our process before, and I thought that I could
16 really help. I knew this was a big shift for Full Spectrum and
17 I wanted to be part of it as a leader.

18 Q. When did you apply for that position?

19 A. It was in the summer, late summer of -- or September of
20 2007.

21 Q. Were you selected?

22 A. I was not.

23 Q. Who was?

24 A. Wade Comeaux.

25 Q. And who is Mr. Comeaux?

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O'Donnell - direct

1 A. Wade was a peer of mine in Full Spectrum, and he ran the
2 sales organization for the central part of the United States.
3 So he ran branches and regions that were in charge of selling
4 or producing loans.

5 Q. Did you have any role with respect to quality assurance in
6 the Central Fulfillment organization?

7 A. I did. My group was part of the risk management
8 organization, and we had responsibility for providing support
9 and oversight for the quality assurance measurement of Central
10 Fulfillment, along with the data and metrics and reporting
11 around the Central Fulfillment activities.

12 Q. So did you monitor loans that went through the Central
13 Fulfillment model throughout the fall of 2007?

14 A. We did. My group monitored all loans for Full Spectrum
15 during that time frame, including the field branches, which
16 were separate from Central Fulfillment.

17 Q. And what did you observe over the course of the fall of
18 2007 from the quality assurance reports?

19 A. There was a rapid deterioration in the quality, so in terms
20 of the QA measurements or the loans that my team audited and
21 reviewed, we saw the defect findings rate for loans that were
22 not investment quality go up significantly.

23 Q. Mr. O'Donnell, I will ask you to turn to tab 406 in your
24 binder. Do you recognize this document?

25 A. I do.

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O'Donnell - direct

1 MS. NAWADAY: Your Honor, we offer Plaintiff's Exhibit
2 406 into evidence.

3 MS. MAINIGI: No objection, your Honor.

4 MR. HEFTER: No objection.

5 THE COURT: Received.

6 (Plaintiff's Exhibit 406 received in evidence)

7 Q. If you go to page 2 of this document, Mr. O'Donnell, could
8 you tell us what this document is?

9 A. This is one of the quality assurance reports that would
10 have been completed by a team that reported up to me.

11 Q. And go to page -- the next page of the document. Can you
12 tell us what was the time period of this the review for these
13 loans?

14 A. The results of this review are for the period of October 19
15 to October 25th, 2007.

16 Q. And what percentage of loans in that period were determined
17 to be high risk?

18 A. According to the report, 92.3 percent of the loans were
19 labeled as high risk.

20 Q. I would like you to turn next to tab 388 in your binder.
21 Do you recognize that document?

22 A. I do.

23 MS. NAWADAY: Your Honor, we offer Plaintiff's Exhibit
24 388 into evidence.

25 MS. MAINIGI: No objection.

D9RTBAN2

O'Donnell - direct

1 MR. HEFTER: No objection, your Honor.

2 THE COURT: Received.

3 (Plaintiff's Exhibit 388 received in evidence)

4 Q. Go first to page 2 of the document -- sorry, page 3 of the
5 document where the presentation begins. And one more page, I'm
6 sorry.

7 What's the time period for this review, Mr. O'Donnell?

8 A. These are phase code four reviews from October 1st through
9 October 31st.

10 Q. What is phase code four?

11 A. In phase code four, loans would have already been funded.

12 Q. And I see a reference to action required. Can you explain
13 what action required is?

14 A. Action required was the label that the quality assurance
15 team had put on a loan prefunding, so in phase code three. And
16 that meant that they had identified that the loan had a defect
17 on it that needed to be corrected, or if it funded in its
18 current state it would likely be labeled a severely
19 unsatisfactory loan by corporate QC if audited.

20 Q. What, if any, difference is there between a high risk
21 finding and an action required finding?

22 A. They're synonymous.

23 Q. What percentage of loans were deemed to have action
24 required?

25 A. Sorry, can you blow it up a little bit more?

D9RTBAN2

O'Donnell - direct

1 Looks like 79.6 percent of the loans reviewed were
2 deemed action required.

3 Q. Can we go to the next page of the document. Page 3 of the
4 presentation. You see the reference to Richardson, Chandler
5 and Rosemead?

6 A. Yes.

7 Q. Were those centers -- we talked about Richardson and
8 Chandler before, can you explain why Rosemad is included in
9 this report?

10 A. Rosemead was also participating in the now -- Rosemead was
11 also participating now as part of Central Fulfillment, so they
12 applied the Hustle process to their loan processing.

13 Q. And which of these three centers was the largest?

14 A. Chandler, Arizona produced the largest number of loans
15 and -- reviewed and funded the largest number of loans on a
16 monthly basis.

17 Q. At this point were you still having regular conference
18 calls concerning quality assurance reports?

19 A. We were.

20 Q. We'll do one more. Please turn to tab 408. Do you
21 recognize that document?

22 A. I do.

23 MS. NAWADAY: Your Honor, we offer Plaintiff's Exhibit
24 408 into evidence.

25 MS. MAINIGI: No objection, your Honor.

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O'Donnell - direct

1 MR. HEFTER: No objection, your Honor.

2 THE COURT: Received.

3 (Plaintiff's Exhibit 408 received in evidence)

4 Q. Could we go to page 2 of the presentation, please. This
5 audit covers loans funded in what time period, Mr. O'Donnell?

6 A. This is from November 2nd through November 8, 2007.

7 Q. And what stage of the loan processing were these reviews
8 conducted?

9 A. This review looked at loans in phase code three, so
10 prefunding.

11 Q. And what percentage of loans were determined to be action
12 required?

13 A. 87.5 percent are labeled as action required.

14 Q. We talked about phase code three reviews and phase code
15 four reviews. Can you explain to us what's the purpose of
16 reviewing loans at those two different stages?

17 A. Phase code three is to try to identify loans that are a
18 problem before they fund so that action can be taken to correct
19 it. So if someone basically made a mistake or made a bad
20 decision, there is still time to fix it before the loan funds,
21 and make sure if it does fund, it funds as investment quality.

22 Phase code four is after the loan is already funded,
23 so the borrower is likely to receive their cash, and the loan
24 is set to be sold to an investor.

25 Q. Can you turn next to tab 63 in your binder. Do you

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O'Donnell - direct

1 recognize this document?

2 A. I do.

3 MS. NAWADAY: Your Honor, we offer Plaintiff's Exhibit
4 63 into evidence.

5 MS. MAINIGI: No objection, your Honor.

6 MR. HEFTER: No objection, your Honor.

7 THE COURT: Received.

8 (Plaintiff's Exhibit 63 received in evidence)

9 THE COURT: Counsel, we're going to, at 11 o'clock,
10 give the jury their mid-morning break. So keep that in mind.

11 Q. Mr. O'Donnell, can you tell us what this, the email from
12 Mr. Brent, relates to?

13 A. This is an email from Mr. Brent to Wade Comeaux who ran
14 Central Fulfillment, with a copy to myself and other
15 executives. And it's highlighting the fact that corrections
16 are not being made to loans that have been identified as a
17 problem or action required prefunding in phase code three.

18 Q. So is this an audit that was conducted at two different
19 stages on the same loans?

20 A. That's true.

21 Q. And what did the review conclude?

22 A. That when we looked at -- we looked at a subset of loans in
23 phase code three, then looked at them again after they funded.
24 Those loans in phase code three had been identified as needing
25 action or action required, and when we did the comparison only

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O'Donnell - direct

1 five percent of the time did the corrections actually get made.

2 Q. If we could turn to page 2 of the document. Blow up the
3 chart at the top. Where do you see what you said reflected in
4 the chart?

5 A. So in the fourth column down from the top, initial results
6 at phase code three, percent of loans with findings 85 percent,
7 and then the same column one over to the right, final results
8 at phase code four, percent of loans with finding 80 percent.

9 Q. If we could go a little further down the page where it says
10 the data from our initial review, and then four points
11 underneath, can you blow that up, please.

12 Mr. O'Donnell can you read the top sentence and point
13 one for us.

14 A. The data from our initial review of phase code four
15 performance is telling us that either, one, the QA emails are
16 not getting pushed down to the loan specialist/underwriters
17 within each Central Fulfillment team and/or.

18 Q. Can you explain what that means? There's a lot of
19 abbreviations there.

20 MR. HEFTER: Objection, lack of foundation.

21 THE COURT: Do you want to lay a foundation?

22 Q. Mr. O'Donnell, were you copied on this email from Steve
23 Brent in the first page of the document?

24 A. I was.

25 Q. And did Steve Brent report to you?

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O'Donnell - direct

1 A. He did.

2 Q. And did he prepare these reports at your direction?

3 A. He and his team, yes.

4 Q. And did he discuss the reports with you?

5 A. He did.

6 Q. Do you have an understanding of what Mr. Brent meant when
7 he said the QA emails are not getting pushed down to the loan
8 specialist/underwriters within each Central Fulfillment team?

9 A. Yes.

10 Q. Can you explain how you interpreted that?

11 A. The lack of a higher percentage of loans being corrected --
12 with only five percent of the loans being corrected, he was
13 concerned that the work done by his team to identify and share
14 the specific problems on loans, that information was not being
15 shared, and it was resulting in loans not being corrected.

16 Q. Who did you think the findings should be shared with
17 specifically?

18 A. My prior practice was to share it with the people that made
19 the mistakes. So in order for the loan specialist and/or
20 underwriter, whoever was reviewing the file, to learn they had
21 to be provided with the review of the loans and specifically
22 pointed to where they had made errors or mistakes.

23 MS. NAWADAY: If we could blow up the sentences in
24 bold.

25 THE COURT: Well, I'll tell you what, why don't we

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O'Donnell - direct

1 take the break at this time.

2 So ladies and gentlemen, we'll take a 15-minute break
3 at this time.

4 (Jury not present)

5 THE COURT: So as the jury was entering this morning,
6 my courtroom deputy received a note from juror number ten that
7 I have already read to counsel at side bar, but I will give
8 counsel copies of it right now and read it again.

9 MR. SULLIVAN: Excuse me, your Honor, sorry to
10 interrupt, could we do this at side bar?

11 THE COURT: No, absolutely not.

12 MR. SULLIVAN: Very well. I didn't want to embarrass
13 the juror.

14 THE COURT: We're not going to embarrass the juror,
15 but we may have to embarrass counsel.

16 MR. SULLIVAN: I doubt it, your Honor.

17 THE COURT: Well, I'm glad to hear that.

18 So the jury note says: Your Honor, there was a man in
19 the courtroom yesterday who I later saw at lunch break with a
20 professional large camera. At the end of the day, he followed
21 juror number two and I as we left the building after giving us
22 a slight grin as we came through the door. I turned to look at
23 him and stopped, then he stopped following us.

24 In addition, I saw that defense was checking on me on
25 social media. I feel intimidated and don't feel I can be

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O'Donnell - direct

1 objective.

2 Signed, juror number ten.

3 Now did anyone witness this person with the camera?

4 MR. SULLIVAN: Not yesterday. As I entered the
5 courtroom this morning, the court building this morning about
6 8 o'clock, at the entrance where the statue is I noticed one
7 photographer standing there all alone waiting for someone to
8 appear.

9 THE COURT: This is -- we're bringing juror number ten
10 in in a minute, but it appears that this was someone who had a
11 professional large camera in the courtroom building?

12 MR. SULLIVAN: No, sir, not that I know of.

13 Let me state one thing, the thing I'm most proud of in
14 40 years of my profession, I never talked to a reporter about a
15 case in court. I'm the lone person left, I think, and I would
16 never talk to a reporter about a case in court ever, much less
17 a photographer. I wanted to make that clear.

18 THE COURT: You didn't need to say that, Mr. Sullivan,
19 because, as everyone knows, your reputation is impeccable and
20 it's always a privilege to have you in my courtroom. But
21 that's not really the point, the question is -- the immediate
22 question is to identify who this person was. If it was a
23 person who had a camera in the courthouse, does anyone in the
24 courtroom know -- does anyone seated in the audience know
25 anything about this?

D9RTBAN2

O'Donnell - direct

1 Yes

2 MR. RAYMOND: Your Honor, Nate Raymond with Reuters.
3 We have a photographer, we use him for many cases to photograph
4 witnesses and stuff. My understanding is he hasn't brought a
5 camera into the courtroom though.

6 THE COURT: Why don't you come on up so we can all
7 hear you.

8 MR. RAYMOND: As typical practice with high profile
9 cases, we have a photographer to take photographs of witnesses
10 that we're going to write about from time to time. We do have
11 photographer. He was here today.

12 THE COURT: Did he have his camera in the court?

13 MR. RAYMOND: I don't believe so.

14 MR. SULLIVAN: He's right here apparently.

15 MR. RAYMOND: I believe he had to check it at the
16 door.

17 THE COURT: This is the photographer you're referring
18 to?

19 Do you want to come forward, sir,
20 Just identify yourself for the record.

21 MR. MILIC: Zoran Milic, photographer with Reuters.

22 THE COURT: Did you have a camera in the court?

23 MR. MILIC: No, we have to check it at the door
24 downstairs.

25 THE COURT: So did you, quote, follow jurors number

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O'Donnell - direct

1 two and ten yesterday?

2 MR. MILIC: Absolutely not, sir.

3 THE COURT: All right. Thank you very much.

4 DEPUTY CLERK: Please spell your name for the record.

5 MR. MILIC: Z-O-R-A-N M-I-L-I-C.

6 THE COURT: The usual spelling.

7 MR. RAYMOND: N-A-T-H-A-N-I-E-L R-A-Y-M-O-N-D.

8 THE COURT: Any relation to Nate Raymond?

9 MR. RAYMOND: I go by Nate also.

10 MS. MAINIGI: Your Honor, the only thing I would add
11 is I saw that same photographer outside yesterday.

12 THE COURT: So I mean one thing I'm beginning to be
13 concerned about is whether we have some misperceptions by juror
14 number ten.

15 MR. SULLIVAN: Yes, your Honor.

16 THE COURT: Now the next question I have is were
17 counsel who were checking, with the Court's permission, on
18 Google while the jury -- but the permission was to check while
19 the jury was being selected, was there any checking done
20 thereafter?

21 MR. SULLIVAN: Your Honor, I'm the last person to know
22 anything about computers.

23 THE COURT: I'm asking not just you, Mr. Sullivan, I'm
24 asking your colleagues who have already demonstrated
25 considerably greater technical skills.

D9RTBAN2

O'Donnell - direct

1 MR. SULLIVAN: If any of my colleagues can answer that
2 question, they certainly are able to do so.

3 THE COURT: All right.

4 MR. HEFTER: Your Honor, we can represent that we did
5 not do any online searching after the jury selection.

6 MS. MAINIGI: I believe -- your Honor, I'm not aware
7 of exactly what it was, but I believe that there was some
8 online searching. I don't know specifically.

9 THE COURT: Who did that?

10 MS. MAINIGI: I would have to get that information.

11 THE COURT: Is it someone here in the courtroom?

12 MS. MAINIGI: I'm not exactly sure.

13 MR. CADY: Judge, I do know. I think we may have done
14 additional online research later that day after the jury was
15 seated. I don't know if we stopped right when it was seated.

16 THE COURT: Did you do any yesterday?

17 MR. CADY: I don't believe so.

18 THE COURT: Where were you seated when you were doing
19 this?

20 MR. CADY: I think -- it wasn't actually me, it was a
21 colleague of mine.

22 THE COURT: Who was that?

23 MR. CADY: I don't think he's here today.

24 THE COURT: Who was that?

25 MR. CADY: I'm not sure which of our colleagues.

D9RTBAN2

O'Donnell - direct

1 THE COURT: Who are the possibilities?

2 MR. CADY: I think it could have been Stewart Ackerly
3 or Matthew Monihan.

4 THE COURT: Where are they today?

5 MR. CADY: I believe they are in a hotel today.

6 Sorry, Judge, Matthew is here.

7 THE COURT: Did you do any checking of jurors after
8 the jury selection.

9 MR. MONIHAN: We had research compiled from
10 individuals at the firm. I'm not sure when it was done. I
11 reviewed it yesterday.

12 THE COURT: Did you do any of that checking here in
13 court?

14 MR. MONIHAN: No, sir.

15 THE COURT: And how about the other gentleman? He's
16 back at your hotel, you say?

17 MR. CADY: I think that's right.

18 THE COURT: So you'll get him here by lunch.

19 MS. MAINIGI: Yes, your Honor.

20 MR. SULLIVAN: And your Honor, I can represent to the
21 Court that at the end of the day I will make a full inquiry if
22 the Court needs to know the facts about when and what, if
23 anything, was done. This is the first case I've heard of where
24 there actually was computer research done, and, as you know, we
25 asked permission to do it. I had no sense whatsoever there was

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O'Donnell - direct

1 a time limitation on that. I assumed one could go on the
2 computer and find out about jurors like anybody. We'll find
3 out for the Court.

4 THE COURT: As you know, my prior policy and the
5 policy of many judges was not to allow that precisely because
6 of the fear that it would invade -- that it would intimidate
7 jurors, in the sense that it's hard enough for people to agree
8 to be jurors, which is a substantial inconvenience lasting over
9 many -- in this case, many weeks. To feel that they're also
10 putting their own persons on the line, albeit with matters that
11 are in some sense public because they're on the social media,
12 is a further impediment to the jury system that one needs to be
13 mindful of.

14 But beginning in a previous trial, and now again in
15 this trial, I permitted, at request of defense counsel, Google
16 searches to be done during the jury selection process so that
17 if there was something that wasn't picked up by the Court's
18 questions but nevertheless might disqualify someone from being
19 a juror, we would find it out sooner rather than later. And
20 the helpfulness of that was borne out in this very case,
21 because there was a prospective juror, not one who wound up on
22 the jury finally, but a prospective juror who, according to
23 what was on the Web, might have had a prior criminal problem.
24 And we were able, therefore, to put questions to the panel and
25 establish that that was not a problem and did not require his

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O'Donnell - direct

1 removal from the panel.

2 But the balance is still a close one, and if I did not
3 make this clear -- and I frankly thought I had, but if I had
4 not made this clear, the only permission I was granting to
5 search into juror -- information about jurors relating to their
6 personalities, their social relations or whatever, matters
7 available on the Web, was for the limited purpose of making
8 sure that the jury selection process was advanced, not to allow
9 a more sweeping invasion of their -- it may not be technically
10 privacy, it's probably not technically privacy, but it's
11 certainly their personal space in some sense. So any further
12 such research will stop forthwith.

13 But let's now bring in juror number ten. This we will
14 do at the side bar.

15 MR. CORDARO: Your Honor, may the government be heard
16 briefly on this note? And it may color the Court's questions.

17 THE COURT: Yes.

18 MR. CORDARO: The juror makes a representation to
19 social media, and I may be a little bit behind on Googling and
20 Google's capabilities, but my understanding is if you Google
21 someone on the internet that person is not going to know that
22 you are looking for them. I read social media as more
23 Facebook, Linked In, that sort of thing where --

24 THE COURT: Good point. So you're saying that
25 someone, you think, may have misused their access to obtain

D9RTBAN2

O'Donnell - direct

1 information that would not be generally available?

2 MR. CORDARO: It's possible, your Honor. Again, I do
3 not profess to be an expert, but I do know if you're using
4 Linked In and you're a member and you access somebody's page --
5 I know when I do it I could be leaving a footprint on that page
6 for the person to see. And I also know the recipient might
7 know I'm leaving a footprint and might know when I'm leaving
8 that footprint.

9 THE COURT: Let me ask counsel, was anything like that
10 done?

11 MR. CADY: Judge, this is something that we were aware
12 of, and when we were designing what type of internet search we
13 were going to do, our directive was make sure we don't leave
14 any footprints. It's Google, maybe Linked In, but we would
15 have it switched off so it wouldn't leave footprints. And
16 there's a way to do it. I have my account switched off.

17 THE COURT: I guess, if nothing else, you have all
18 successfully convinced me never to allow this again.

19 MR. HEFTER: Your Honor, from our perspective, and to
20 follow up with what Mr. Sullivan said, I don't believe we did
21 that at all, but I will make a full inquiry of my firm.

22 MR. SULLIVAN: You might be interested to know I'm not
23 on Facebook, so no one can leave footprints.

24 Your Honor, could I make a practical suggestion here?
25 No matter what the juror says, it would be helpful from our

D9RTBAN2

O'Donnell - direct

1 perspective if you make it known during the colloquy the
2 permission was asked, the Court gave permission, and by the
3 way, whatever was found was obviously favorable at the time,
4 because we accepted the jurors.

5 THE COURT: Well, we'll take the colloquy one step at
6 a time. We'll see what comes up. I think the colloquy will be
7 done on the record but in the robing room -- we'll decide
8 whether or not to seal it or not afterwards -- with one counsel
9 from each party.

10 MR. SULLIVAN: Your Honor, would you ask him during
11 the colloquy whether he said anything to the other jurors about
12 this, too?

13 THE COURT: Yes, of course. That is part of my
14 concern.

15 MR. SULLIVAN: Thank you.

16 THE COURT: Let's bring in juror number ten. And
17 counsel come with me in the robing room with the reporter.

18 (Continued on next page)
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D9RTBAN2

O'Donnell - direct

1 (In robing room with one counsel from each party and
2 juror present)

3 THE COURT: Thank you for your note, actually. So we
4 need to put this on the record, obviously.

5 JUROR: Sure.

6 THE COURT: But going to the first part of it --

7 JUROR: I have something to add. He was here today.
8 Now he's wearing a media badge and sat in the media section.
9 He wasn't wearing it yesterday.

10 THE COURT: Did you see him with a camera in the
11 courthouse?

12 JUROR: No, he was outside against the wall across the
13 street with a camera. I initially assumed he was press, and
14 then he started following us. And that disturbed me a lot,
15 obviously. He didn't follow us far, but when I stopped and
16 turned, he kind of turned and stopped.

17 THE COURT: So I mean I think we know who -- he's part
18 of the media, but they like to take pictures outside the
19 courthouse of the witnesses, not of the jurors.

20 JUROR: I didn't see him taking a picture.

21 THE COURT: Maybe he thought you were a witness and
22 then he realized he was wrong or something. I don't know, we
23 can inquire of him, but I don't think he was trying to stalk
24 you is my point. And in any event, he had nothing to do with
25 the parties, he's a media guy.

D9RTBAN2

O'Donnell - direct

1 JUROR: I didn't initially know that. I saw him walk
2 in this morning again with a big media pass and he sat in the
3 media section. Yesterday he wasn't in the media section. He
4 looked kind of shifty to me, looked around at everybody like he
5 was memorizing faces. That's why I noticed him initially.

6 THE COURT: Well, I don't know about shifty, but I
7 think the job of most media people is to be inquisitive.

8 JUROR: Sure.

9 THE COURT: So now what was this about checking on the
10 social media?

11 JUROR: I went on Linked In last night and saw some
12 attorneys had searched my name. I eliminated my name. I
13 removed my name from Linked In last night.

14 THE COURT: Do you know which attorneys?

15 JUROR: I think it was Giuliani & Bracwell, and it
16 looked to me -- I kind of was freaked out a little bit, so I
17 got my name off it. Unfortunately, they have something new,
18 when you remove your name you can no longer trace who looked at
19 you. When you make yourself anonymous, others become
20 anonymous, but I saw it briefly.

21 THE COURT: During the voir dire -- that's the process
22 where the jurors are being selected -- the lawyers, with
23 permission of the Court, can go on social media, the general
24 Google to find out like if you have been convicted of a crime
25 or stuff like that, because that's often helpful. No

D9RTBAN2

O'Donnell - direct

1 permission was given to anyone to go after the --

2 JUROR: I don't know when it was. It doesn't really
3 say when it was.

4 THE COURT: So you're saying it could have been from
5 that earlier period?

6 JUROR: I didn't check it until last night.

7 THE COURT: What makes you think, now that we have
8 sort of -- because I have noticed you've been an incredibly
9 attentive juror and we don't want to lose you, but you
10 indicated that you didn't feel you could be objective.

11 JUROR: I just thought -- I have never been followed
12 before, and when I felt someone was following --

13 THE COURT: That, of course, was not the parties.

14 JUROR: The media. I didn't know that at the time.
15 He had no media credit on.

16 THE COURT: Now that you know, you're OK?

17 JUROR: Yeah, a little safe.

18 THE COURT: By the way, did you discuss this with your
19 fellow jurors?

20 JUROR: No.

21 THE COURT: So you shouldn't, because --

22 JUROR: But other people mentioned they have been
23 tracked on Linked In, too, so it seems to be a concern.

24 THE COURT: I will inquire much more into that. But
25 anyway, thank you so much.

D9RTBAN2

O'Donnell - direct

1 JUROR: I didn't mention my note.

2 THE COURT: You can go back, thank you so much.

3 (Juror not present)

4 MR. SULLIVAN: Could I make a suggestion?

5 THE COURT: No, I want to say something first and make
6 an inquiry. First of all, I see no reason to excuse juror
7 number ten given what I just heard.

8 MR. MUKASEY: I want to be heard on that.

9 THE COURT: I want to be heard on what he just said,
10 which is flatly contrary to the representation your partner
11 made to me about two minutes ago.

12 MR. MUKASEY: This is brand new to me. I think he
13 made a quick inquiry of the people in the courtroom. I
14 obviously have to go back and figure this out. I think we were
15 acting within our understanding of the Court's --

16 THE COURT: First of all, I went back and looked at
17 the request, which was not made by you at all, it was made by
18 Williams & Connolly, and it was limited -- I just checked it
19 out, it was limited to voir dire. First sentence of the
20 request was limited to voir dire. So let's be clear of that.
21 No permission was given to anything after voir dire.

22 Secondly, the use of Linked In is a far more intrusive
23 thing.

24 Thirdly, your partner just represented repeatedly that
25 whatever else might have been done, nothing like this was done

D9RTBAN2

O'Donnell - direct

1 by your firm. So I'm not much interested in your suggestion,
2 Mr. Mukasey, but go ahead and make it.

3 MR. MUKASEY: I don't have a suggestion. I will give
4 you my understanding, my very, very limited understanding. I
5 am told by one of the younger and more facile-with-technology
6 associates that when you Google, you can Google somebody's name
7 and get access or get ability to their -- to see their Linked
8 In or their Facebook or something. So I think there may have
9 been an understanding or misunderstanding that that fell within
10 the bounds of Googling. I don't think anybody hacked into a
11 Linked In account. I think that comes up when you Google Marc
12 Mukasey, if I had a Facebook page or a Linked In page or a
13 Twitter, that comes up as part of the Google. So I don't think
14 anybody was trying to exceed the Court's --

15 THE COURT: We'll see.

16 MR. MUKASEY: I can't answer and can't speak
17 intelligently to this.

18 MR. SULLIVAN: Your Honor, could I make a suggestion?

19 THE COURT: Yes.

20 MR. MUKASEY: Nor do I know when it was done.

21 MR. SULLIVAN: First off, I can write an email and
22 type it up. Is it possible this whole thing could be calmed by
23 the Court saying something to the effect that my jury process
24 is very efficient -- I have been in jury selections that take a
25 day or two, you do it very quickly, and I think it was good in

D9RTBAN2

O'Donnell - direct

1 that sense, although I agree with you I wouldn't do it in the
2 future, to give people the opportunity to use the Web to find
3 out. If they think you gave permission and nothing further was
4 done, my sense is that that will calm everybody.

5 THE COURT: Well, I need to find out more first what
6 was done. And I think what has to happen is that over the
7 lunch break, if not sooner, folks from Bracewell & Giuliani
8 need to make a much more thorough inquiry and report back
9 before the end of the lunch break to the Court. And then your
10 suggestion may well be a good one, but I don't want to follow
11 up on that suggestion now until I find out more about the
12 facts.

13 MR. SULLIVAN: Because as it sits now, he says other
14 jurors have noticed it. So if other jurors are concerned, we
15 could be in a real mess unless they're totally calmed down.

16 THE COURT: But I don't want to calm them down if what
17 was done was not proper. So let's find out what was done.

18 Let's go back.

19 (Continued on next page)

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D9RTBAN2

O'Donnell - direct

1 (In open court)

2 THE COURT: We had inquiry of juror number ten. He
3 was not aware that the photographer, who is the gentleman who
4 introduced himself earlier, was a media person. But the
5 incident where he thought he was being followed occurred
6 outside the courthouse. So I was very glad to hear all of
7 that. He did regard your photographer, who is a very large
8 fellow, as a bit intimidating, but I'm sure that perception was
9 no different from the way all of us feel about photographers
10 from the media.

11 With respect to the social media search, though, it
12 was a much more disturbing revelation. He indicated that he
13 had received notification yesterday that he -- that Linked In
14 contact had been made with his information by lawyers from
15 Bracewell & Giuliani, contrary to the -- if he's accurate,
16 contrary to the representation that was made to this Court just
17 a few minutes ago. And he indicated that while he had not
18 discussed any of this with his fellow jurors, that other jurors
19 had indicated that they had received similar notifications from
20 Linked In. So we need to get to the bottom of this and find
21 out exactly what happened sooner rather than later.

22 All right. Unless anyone needs a further break, we'll
23 bring the jury back in and bring the witness back in.

24 I will also state for the record, as I stated in the
25 robing room, that I went back and reviewed the letter from

D9RTBAN2

O'Donnell - direct

1 Williams & Connolly asking permission to Google, and it was
2 limited to voir dire. It's the very first sentence. So any
3 Googling that went on after that is without permission of the
4 Court.

5 (Continued on next page)

D9R3BAN3

O'Donnell - direct

1 (Jury present)

2 THE COURT: Ladies and gentlemen, some of you have
3 heard the term legal fiction. The definition of legal fiction
4 is when the Court says you'll have a 15-minute break and he
5 gives you a half hour. Anyway, we're ready to continue.

6 BY MS. NAWADAY:

7 Q. Ms. Michaud, can you blow up the paragraph in bold.

8 Mr. O'Donnell, can you read that paragraph for us.

9 A. "What is your suggestion on getting better performance and
10 attention paid to the loan manufacturing quality within CF? I
11 defer to you and your team to advise. FYI, I have received
12 some feedback from your group that I feel that the QA e-mails
13 should be going to directly to the processing staff.

14 Q. Did you have an understanding of what QA e-mails were?

15 A. Those were individual e-mails that came out about a
16 particular loan. So if we had a review of a loan file, an
17 e-mail would go out to share the information about whether that
18 loan was acceptably underwritten or not.

19 Q. Who did the processing staff include?

20 A. Those would be the loan specialists and their managers.

21 Q. So QA e-mails went directly to the processing staff, is
22 that -- what would be the purpose of sending QA e-mails
23 directly to the processing staff?

24 A. To provide them direct feedback on their performance. How
25 well they had done on a particular loan file.

D9R3BAN3

O'Donnell - direct

1 Q. Would the QA e-mail provide the feedback on the specific
2 loan a processor was handling?

3 A. It would.

4 Q. And identify any mistakes that were made by the processor?

5 A. It would.

6 Q. Did you believe QA e-mails should be going directly to the
7 processing staff?

8 A. I did. That was a practice I used in my prior role with
9 underwriters, provided them direct feedback on their
10 performance.

11 Q. Did you express that view to anyone?

12 A. I did.

13 Q. Who?

14 A. I expressed it in the steering group -- excuse me.
15 Steering committee and working group formats as well as to my
16 boss.

17 Q. Who in particular?

18 A. Cliff Kitashima who was my boss, Greg Lumsden who was the
19 president of the division, and Rebecca Mairone who was in
20 charge of the organization. Central Fulfillment.

21 Q. I believe you said you were still having weekly meetings
22 surrounding the quality assurance reports at this time.

23 A. We were. We were having weekly meetings specifically about
24 quality assurance. And other meetings relating to the work
25 flow and Central Fulfillment.

D9R3BAN3

O'Donnell - direct

1 Q. What kind of feedback, if any, were you getting from
2 members of the steering committee about the quality assurance
3 process in or around the time the date of this e-mail?

4 A. There was a lot of noise. There was a sort of a
5 kill-the-messenger mentality. Rather than, as I had hoped,
6 that we would focus on the results of what my group was
7 finding. Instead, the focus was turned on my group and we were
8 told that our audits were overreaching that the results weren't
9 valid, that we needed to go back and work on our own process,
10 that no changes were going to be made.

11 Q. Who in particular said that?

12 A. Rebecca Mairone and Greg Lumsden.

13 Q. Did there come a time when the distribution of quality
14 assurance reports changed in some way?

15 A. There did.

16 Q. What was that change?

17 A. The change was my group was asked to stop, told to stop
18 sending out the reports to everyone in Central Fulfillment.
19 They could no longer be -- the quality assurance reports, the
20 quality control reports, or any information relating to the way
21 loans were performing could not be shared.

22 Q. Who made that decision?

23 A. Rebecca Mairone.

24 Q. How do you know that?

25 A. I received an e-mail instructing us not to do that.

D9R3BAN3

O'Donnell - direct

1 Q. Did she give you any reason for the change in distribution
2 of the reports?

3 A. Yes.

4 Q. What reason did she give you?

5 A. The view was that the reports were distracting the folks in
6 Central Fulfillment, the line employees and their managers from
7 adapting to the new loan processing model. And slowing things
8 down. We were scaring them.

9 Q. You were scaring whom?

10 A. We were scaring the members of Central Fulfillment with our
11 audits.

12 Q. How so?

13 A. Because of the high defect rate, the employees were scared
14 they might lose their jobs.

15 Q. You mentioned that Ms. Mairone communicated a change in the
16 distribution concerning the reports in an e-mail. Did you also
17 discuss the quality assurance reports with her around this
18 time?

19 A. I did.

20 Q. Did these discussions happen at the regular quality
21 assurance meetings that you referred to earlier?

22 A. They did. Generally we had those meetings in Pasadena in
23 the board room.

24 Q. What did Ms. Mairone say during those meetings?

25 A. She was frustrated with the audit process, disagreed with

D9R3BAN3

O'Donnell - direct

1 the findings, thought our rates were too severe, and didn't
2 want them shared with the team anymore. She wanted the reports
3 to go solely to her.

4 Q. Did you say anything in response?

5 A. I disagreed. Tried to share the value that I had
6 experienced previously in my prior role with sharing
7 information, and I thought that cutting people off from
8 receiving this kind of specific information about their work
9 wasn't going to help them get any better. And it wasn't going
10 to correct our quality problem.

11 Q. Mr. O'Donnell, can you please turn to tab 68 in your
12 binder. Do you recognize this document?

13 A. I do.

14 MS. NAWADAY: We offer Plaintiff's Exhibit 68 into
15 evidence.

16 MS. MAINIGI: No objection, your Honor.

17 MR. HEFTER: No objection, your Honor.

18 THE COURT: Received.

19 (Plaintiff's Exhibit 68 received in evidence)

20 Q. Mr. O'Donnell, can you tell us generally what this document
21 is to begin with.

22 A. This is an e-mail from Wade Comeaux to Rebecca Mairone and
23 also tagged to an e-mail from Rebecca Mairone to Wade, the
24 leadership of Central Fulfillment, and other executives
25 including myself.

D9R3BAN3

O'Donnell - direct

1 Q. I'll focus your attention on the e-mail in which you're
2 copied which is the 11/29 e-mail from Ms. Mairone. Can you
3 tell us what that concerns.

4 A. This is the request that we no longer send and distribute
5 reports directly to the employees in Central Fulfillment.

6 Q. Can you read for us the first paragraph in the blown up
7 portion of the document.

8 A. "I have discussed with both Greg and Cliff the following
9 items and a change in process and direction. The purpose of
10 these changes is to immediately increase the focus on funding
11 loans and working the pipeline, as well as streamlining the
12 processing requirements for prime loans."

13 Q. Do you have an understanding of what Ms. Mairone meant by
14 saying "the purpose of these changes is to immediately increase
15 the focus on funding loans"?

16 A. She was concerned with getting loans funded.

17 Q. Did you have discussions with Ms. Mairone around
18 November 2007 concerning increasing the focus on production?

19 A. I did. I was concerned that by cutting off the
20 communication about loan quality, employees wouldn't know how
21 to gauge their performance, whether it was positive or
22 negative. By saying we're solely going to focus on production,
23 and not giving them any information about quality, we're
24 sending a strong message that quality didn't matter.

25 Q. Did anyone communicate to you there should be a increased

D9R3BAN3

O'Donnell - direct

1 focus on production?

2 A. I heard we need to meet our funding goals. There were
3 bonus programs in place specifically tied to turn times and
4 funding volume.

5 Q. Who in particular communicated that to you?

6 A. Greg Lumsden, Rebecca Mairone, Cliff Kitashima.

7 Q. Directing your attention to tab 65 in the binder.

8 MS. NAWADAY: We offer Plaintiff's Exhibit 65 into
9 evidence.

10 MS. MAINIGI: No objection, your Honor.

11 MR. HEFTER: If I could just have one moment, your
12 Honor.

13 THE COURT: Yes.

14 MR. HEFTER: No objection, your Honor.

15 THE COURT: Received.

16 (Plaintiff's Exhibit 65 received in evidence)

17 Q. Can we blow up the first two paragraphs in the top e-mail.
18 Mr. O'Donnell, can you read the blown up portion of the
19 document for us.

20 A. "See below. We have to pick up productivity in all areas.
21 We have to improve quantity and have reasonable prime quality.
22 But at the moment we have to increase velocity fundings with
23 velocity. No rationalizations. We own it. While showing
24 respect to other departments, we have to take ownership of
25 funding a hell of a lot more loans in December. This week, I'm

D9R3BAN3

O'Donnell - direct

1 going to be digging into the pipelines and bringing light to
2 areas where we may be missing the boat. Hopefully we will
3 catch people doing it right but we will be candid either way."

4 Q. Thank you. Can you turn next to tab 67 in your binder.

5 MS. NAWADAY: Your Honor, we offer Plaintiff's Exhibit
6 67 into evidence.

7 MS. MAINIGI: No objection, your Honor.

8 MR. HEFTER: Your Honor, we'll raise a hearsay
9 objection to this document.

10 THE COURT: This is 67?

11 MS. NAWADAY: Yes, 67, your Honor.

12 THE COURT: For some reason my binder does not have --

13 MR. HEFTER: I'm going to withdraw the objection. I
14 apologize. No objection.

15 THE COURT: 67 is received.

16 (Plaintiff's Exhibit 67 received in evidence)

17 Q. Directing your attention down the lower part of the
18 document, there is an e-mail from Greg Lumsden to Cliff
19 Kitashima dated 11/29/2007. Do you see that, Mr. O'Donnell?

20 A. I do.

21 Q. Can you go to page two of the document. And can you blow
22 up the first two sentences in the first paragraph.

23 Mr. O'Donnell, can you read the first two sentences in
24 the blown up portion of the document.

25 MS. MAINIGI: Objection, your Honor. May I approach?

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O'Donnell - direct

1 THE COURT: Okay.

2 (Continued on next page)

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O'Donnell - direct

1 (At the side bar)

2 MS. MAINIGI: Your Honor, I object. Mr. O'Donnell is
3 not on that particular portion of the e-mail. We have no
4 objection to the document, but to have him basically read out
5 loud a passage from an e-mail that he never received.

6 THE COURT: I assume that's foundational to a question
7 you are going to ask him about that.

8 MS. NAWADAY: Also, your Honor when we discussed
9 previously about admitting documents into evidence if they're
10 not objected to but we don't have a live witness who is copied
11 on the document, your Honor suggested we introduce it at a
12 point during a live witness in the testimony where it would
13 make more sense to the jury.

14 MS. MAINIGI: I didn't object to the last document
15 because counsel did the same thing on the last document. It
16 was an e-mail. We have no problem bringing it in as a business
17 record. But the passage that's being read, he had no
18 involvement in.

19 THE COURT: It's in evidence, it is in front of the
20 jury. I think if he's being asked to just read a sentence or
21 two, I think it can facilitate the natural flow into whatever
22 the next question put to him is.

23 I agree with defense counsel, if this were to become a
24 more elaborate process that simply had the effect of
25 emphasizing some fact about which the witness knows nothing, it

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O'Donnell - direct

1 could become a problem. But I don't see it being a problem for
2 this limited purpose so I will allow it.

3 But I think if the document is in front of the jury,
4 you can just ask the jury to read the given paragraph, rather
5 than asking the witness to read it. But it is in evidence.

6 MS. NAWADAY: I plan to move on after asking him to
7 read these two sentences. I'll move on, your Honor.

8 THE COURT: Okay.

9 (Continued on next page)

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D9R3BAN3

O'Donnell - direct

1 (In open court)

2 BY MS. NAWADAY:

3 Q. Mr. O'Donnell, turning back to the e-mail from Mr. Lumsden
4 to Mr. Kitashima, can you read just the first two sentences of
5 that blown up portion of the e-mail.

6 A. "We have more than one problem here. If we do not fund the
7 volumes per our budget, we will not to worry about QC and QA
8 for FSL."

9 Q. Thank you. We can now turn back, if we can pull up
10 Plaintiff's Exhibit 68. If we can blow up point one of
11 Ms. Mairone's e-mail.

12 Mr. O'Donnell, can you read the first three sentences
13 of point one.

14 A. "The QA communication to Central Fulfillment will stop
15 immediately 11/29/07. The communication will be directed to
16 only Rebecca Mairone for the next 30 days. I will meet with
17 the compliance and quality groups solely, as we work through
18 the process, reporting and communication plan for the Central
19 Fulfillment group."

20 Q. Actually if you can proceed to read the rest of the
21 paragraph and then I'll ask you about it.

22 A. "I will determine based on my meetings with compliance and
23 QA group, how and when we will update the CF management team,
24 and any other CF employees as necessary. In other words, Wade,
25 Robert, Jim and Armand will not be required to attend any

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O'Donnell - direct

1 conference calls with quality/risk for the next 30 days to
2 completely empower them to focus on production."

3 Q. Now if we can just go back, I'll ask you about some of the
4 names in that paragraph. Is the Wade referred to there Wade
5 Comeaux?

6 A. Yes.

7 Q. Again what was his role at this time?

8 A. He was the leader of the Central Fulfillment organization.

9 Q. Is the Robert Robert Price that you referenced earlier?

10 A. It is.

11 Q. He's one of your direct reports?

12 A. At this time no, he reported directly to Wade.

13 Q. Is Jim Jim White?

14 A. Yes.

15 Q. Who did Jim White report to at that time?

16 A. He reported to Wade Comeaux.

17 Q. Who did Mr. Comeaux report to?

18 A. Wade reported to Rebecca Mairone.

19 Q. Who is the Armand referred to?

20 A. That's Armand Massie. He reported to Wade Comeaux.

21 Q. What was his role?

22 A. He was a senior vice president of Central Fulfillment
23 operations, so he helped manage the overall process, but he
24 didn't have a specific center that he led.

25 Q. Did you express disagreement with this change?

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O'Donnell - direct

1 A. I did.

2 Q. You expressed that disagreement to whom?

3 A. To my boss, Cliff Kitashima, to the steering committee,
4 Rebecca Mairone, Greg Lumsden, Loren Rodriguez.

5 Q. Did anyone express disagreement to you about this change?

6 A. Yes. My former direct reports, Jim White, Robert Price.

7 Q. What did Mr. Price say to you?

8 A. He asked that I continue to provide him with the quality
9 assurance reporting.

10 Q. Did he give a reason for asking that the quality reports
11 continue to be distributed to him?

12 A. He wanted to continue to be aware of how his teams were
13 doing and where, if there were problems, where they were so he
14 could address them.

15 Q. What did Mr. White say to you?

16 A. He wanted the reports. He wanted to be able to receive
17 them, even though it was being mandated that I not share them.

18 Q. Did he give you a reason for wanting the reports?

19 A. So that he could address any problems with the teams that
20 worked -- reported to him. Worked in his center.

21 Q. Do you know whether it was part of Mr. Price's or
22 Mr. White's typical responsibilities to attend conference calls
23 with quality/risk as it was referred to here?

24 A. It was.

25 Q. Do you have an understanding of what took place on those

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O'Donnell - direct

1 conference calls?

2 A. I did. My teams conducted those conference calls.

3 Q. What did you discuss on those conference calls?

4 A. We would look at the overall results from the audits my
5 teams completed on both funded and loans that were prefunded.
6 We would describe and give examples of the problems and defects
7 we were finding. And we would ask questions about what could
8 be done to improve the loan quality.

9 Q. So if Wade, Robert, Jim, and Armand were not attending
10 those conference calls, who was attending those conference
11 calls?

12 A. The conference calls didn't continue.

13 Q. Can we blow up point two in the document on page two.
14 Mr. O'Donnell, can you read that paragraph for us.

15 A. "The QC communication to Central Fulfillment will also be
16 directed to myself on behalf of the CF management team for the
17 next 30 days. We will revise the QA process to focus solely on
18 SUS items, not process or SOPs. We will not conduct any
19 on-site reviews until further notice. Therefore, the 12/1
20 start date will be delayed. We are evaluating that process
21 until further notice. The feedback from QA will be biweekly,
22 high level data with loan level to back it up."

23 Q. The sentence that says "we will not conduct any on-site
24 reviews until further notice." Do you have an understanding of
25 what on-site reviews were?

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O'Donnell - direct

1 A. On-site reviews were conducted by management, actually
2 visiting the center, and discussing -- meeting with employees,
3 looking at the work flow, reviewing results, basically to go
4 and see what was happening, what was working, what was not
5 working.

6 Q. You said they were conducted by management. Who would
7 participate in on-site reviews?

8 A. I participated, my boss Cliff Kitashima participated, it
9 was a regular occurrence. Even Greg Lumsden would go to the
10 field and go to centers, sit down next to underwriters or loan
11 specialists and watch them process files.

12 Q. What, if anything, did you learn in the course of these
13 on-site reviews typically?

14 A. We learned a lot. We learned where the process might be
15 broken, we learned where we were asking people to do things
16 that might have been in conflict with the way the work flow
17 should operate. We learned where there are training
18 opportunities or where changes that had been communicated
19 hadn't been understood by the line staff or where they had made
20 up their own process to account for things we hadn't thought
21 of.

22 Q. Did the on-site reviews continue after the date of this
23 e-mail?

24 A. I did -- I did continue to conduct on-site reviews when I
25 traveled to Chandler because I had a team there. But, I don't

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O'Donnell - direct

1 believe anyone else conducted on-site reviews.

2 Q. Why did you continue to conduct on-site reviews?

3 A. I wanted to continue to know what was happening with the
4 process, and I saw high value in that kind of interaction with
5 line level employees who could tell me the way it was.

6 Q. If we can blow up the third paragraph. I won't ask you to
7 read the paragraph in its entirety. I'll direct your
8 attention, actually can you read the first two sentences of
9 that paragraph.

10 A. "Effective 12/15/07 may review to implement sooner the
11 income calculator will be the only worksheet separate from Edge
12 inputs that will be required on all prime and EA loans. The
13 other types of income worksheets and any checklists for income
14 will be eliminated."

15 Q. That's a fairly technical first two sentences. Can you
16 explain what that means?

17 MR. HEFTER: For the sake of completeness, can he read
18 the rest of the paragraph.

19 THE COURT: Yes, please read the rest.

20 A. "The LSs will need to use the new stated income
21 reasonability worksheet as a job aid for all stated loans.
22 This document will not be required to be signed or input into
23 the VLF file. There will be enhancements to the income
24 calculator to incorporate the stated income reasonability items
25 on to a single form. Both NSC and field operations."

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O'Donnell - direct

1 Q. Mr. O'Donnell, I am going to need some help interpreting
2 some of this. Can you explain what is the worksheet that's
3 being referred to in the first sentence of the paragraph?

4 A. The income calculator was simply a database, an Excel
5 spreadsheet-like document where an underwriter or processor
6 could make inputs to help them calculate the income correctly.

7 Q. Was the worksheet a requirement?

8 A. It was a requirement.

9 Q. Do you have an understanding of why it was a requirement?

10 A. Historically our highest level of SUS findings had come
11 from the area of income calculation.

12 Q. So, how if at all did having a worksheet on income
13 calculation address that?

14 A. It helped to standardize the approach. So it was, you
15 know, filling out sequential boxes with information, so we knew
16 that it was instructing the underwriter or loan specialist that
17 might be using it how to correctly calculate income. So we
18 could reduce errors and get better consistency.

19 Q. A few sentences into that where it says "the new stated
20 income reasonability worksheet as a job aid for all stated
21 loans."

22 Is there any difference between a job aid and a
23 worksheet that you just described?

24 A. The job aid would serve as a reference tool. So it was not
25 something that was mandatory. It was something that if a loan

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O'Donnell - direct

1 specialist or underwriter chose to use it as a tool to help
2 guide them, they could.

3 Q. The next sentence reads "this document will not be required
4 to be signed or be inputted into the VLF file." What is the
5 VLF file?

6 A. Full Spectrum had nearly a completely paperless process.
7 And that stands for virtual loan file. It is the electronic
8 file that would replace a paper file that traditionally is used
9 in mortgage lending.

10 Q. Was a worksheet in the virtual loan file something that
11 someone reviewing the loan file at a later time might consider?

12 A. Only if the worksheet or document had been uploaded into
13 the electronic file. Otherwise it wouldn't be available for
14 anybody to see.

15 Q. So how, if at all, could an auditor sort of, for lack of a
16 better phrase, check the work of a loan specialist without
17 uploading a worksheet into the virtual loan file?

18 A. If the loan specialist had not completed and uploaded the
19 worksheet, it would not be available for anybody to review to
20 see if they had done it or not.

21 Q. Can we now blow up point four of the document. Can you
22 read that for us, Mr. O'Donnell.

23 A. The whole thing?

24 Q. Yes. Please.

25 A. "Effective immediately, 11/29/07, the prime property

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O'Donnell - direct

1 assessment review and certified value property assessment
2 review checklists will become job aids for all loans. These
3 worksheets will no longer be required to be signed or input
4 into VLF, but will need to be followed as a job aid. They will
5 include all prime and agency loan appraisals, including the new
6 certified appraisals from Landsafe. Both NSC and field
7 operations."

8 Q. Is this paragraph addressing worksheets as well?

9 A. It is. Worksheets relating to the review of property
10 appraisals.

11 Q. Did you have discussions around November of 2007 with the
12 steering committee concerning either the income or appraisal
13 worksheets?

14 A. I did.

15 Q. Did you agree with eliminating either the income or the
16 appraisal worksheet as checklists?

17 A. I did not.

18 Q. Why not?

19 A. We had put these worksheets and checklists in place for
20 underwriters, people with a lot more experience than loan
21 specialists. When we did it because underwriters made
22 mistakes, and we knew that from loans that had been previously
23 reviewed as part of our QC process and QA process. So we
24 developed these specifically to address where underwriters had
25 learning gaps, or having problems in making mistakes.

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O'Donnell - direct

1 So to remove these type of checklists for a loan
2 specialist who didn't have anywhere near the technical
3 expertise of an underwriter, was asking for trouble in my view.

4 Q. Did you express that view to anyone?

5 A. I did.

6 Q. Who did you express your view to?

7 A. I expressed it to the members of the leadership of Central
8 Fulfillment, the site manager, Jim, Robert, David Sallis, to
9 Wade Comeaux, to Loren Rodriguez, to my boss Cliff Kitashima,
10 and to Rebecca and Greg.

11 Q. Finally can we blow up point five in the document. Can you
12 read that for us, Mr. O'Donnell.

13 A. "We will prepare a note to all CF employees to help them
14 understand they should feel confident in using their authority
15 and that we will have a QoG comp hit reprieve through the end
16 of January, and they will no longer receive direct QA feedback
17 until further notice. The feedback they will receive will come
18 from their supervisors only."

19 Q. Can you explain generally how you interpret this paragraph,
20 Mr. O'Donnell.

21 A. It's stating there is going to be a note prepared to go out
22 to the employees of Central Fulfillment, encouraging them to
23 confidently use their authority. And also that the suspension
24 of any impact negative impact to their bonus based on quality
25 would extend through the end of January. They would not get

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O'Donnell - direct

1 any further feedback directly from my area, the risk management
2 area, in quality assurance.

3 Q. Did you agree with that change?

4 A. No, I did not.

5 Q. Why not?

6 A. At this point we were seeing rapid deterioration in our QC
7 and QA scores. We were seeing mistakes being made on a very
8 high number of loans. And to extend the reprieve from any kind
9 of compensation hit in conjunction with taking away any
10 information that would help people get better at their job, I
11 thought was irresponsible.

12 Q. Did you communicate that to anyone?

13 A. I did.

14 Q. Who did you communicate that to?

15 A. To my boss directly, Cliff Kitashima, to members of the
16 steering committee, including Greg and Rebecca, to members of
17 the working group that was still working on implementing the
18 Hustle process in Central Fulfillment, and to the leaders of
19 Central Fulfillment, some of whom were my former direct
20 reports.

21 Q. Did any of those individuals respond to your concern in any
22 way?

23 A. It was kind of more of the same. I was, you know, being
24 seen as someone who was making a lot of noise about the
25 quality, and it was shoot-the-messenger type of response.

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O'Donnell - direct

1 Q. In the first sentence of paragraph five it refers to the
2 change applying to Central Fulfillment employees. Were there
3 any further changes to the QoG comp hit reprieve around this
4 time?

5 A. Just that it was extended to all employees, not just
6 Central Fulfillment. There was no QoG hit for any employees in
7 Full Spectrum, including the sales and production people.

8 Q. Did you have any understanding of who made the decision to
9 extend the quality of grade comp hit reprieve throughout Full
10 Spectrum Lending?

11 A. Based on this note, it is a directive from Rebecca Mairone.

12 Q. Mr. O'Donnell, can you please turn to tab 20 of your
13 binder. Do you recognize this?

14 A. I do. It is an e-mail that I wrote.

15 MS. NAWADAY: We offer Plaintiff's Exhibit 20 into
16 evidence.

17 MS. MAINIGI: No objection, your Honor.

18 MR. HEFTER: No objection, your Honor.

19 THE COURT: Received.

20 (Plaintiff's Exhibit 20 received in evidence)

21 Q. Mr. O'Donnell, I will direct your attention first to the
22 e-mail dated December 12, 2007 from Ms. Mairone. Do you see
23 yourself as one of the recipients of this e-mail?

24 A. The e-mail from Ms. Mairone?

25 Q. Yes.

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O'Donnell - direct

1 A. I would have received this e-mail as I was one of the
2 employees under FSL Underwriting Richardson. That's where my
3 office was located.

4 Q. Can we go to the second page of the document, please. Blow
5 up the top paragraph on the second page.

6 Can you read that for us, Mr. O'Donnell.

7 A. "We understand many of our employees are in new roles, have
8 new responsibilities and are learning new skills. We want you
9 to feel confident and excited about these new opportunities.
10 If you have recently earned a new level of lending authority,
11 you recently began completing compliance reviews, or you are
12 now signing off on conditions, we want you to know that each
13 FSL employee will have a QoG reprieve on all funded units
14 completed through 12/31/07. This will be in effect for
15 funders, underwriters, validators, and loan specialists, and
16 any other FSL employee who is monitored and scored by QoG. In
17 other words, your compensation will not be adversely affected
18 on any loans funded on or by the last day of 12/31/07."

19 Q. Do you have an understanding of why this decision was made,
20 Mr. O'Donnell?

21 A. It was an effort to increase production before the year
22 end.

23 Q. How do you know that?

24 A. Well, the decision earlier was to extend it through
25 January, and this message is saying the reprieve would go

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O'Donnell - direct

1 through 12/31/07, year end. The message is if you fund loans
2 throughout the end of the year, you won't have any negative
3 impact if there is a problem. But conversely, if you fund it
4 after, it is unclear about whether you would or not.

5 Q. Can you blow up the next sentence, the first sentence of
6 the next paragraph. Can you read the first sentence for us,
7 Mr. O'Donnell.

8 A. "CLUES is the underwriter. We should trust it and validate
9 the conditions requested."

10 Q. How, if at all, is validating conditions different from
11 clearing conditions?

12 A. There are different types of conditions. Some require
13 simple validation, there is not much interpretation or study to
14 be done. Others require a lot more intensive scrutiny like the
15 appraisal work or calculating income.

16 Q. If I could direct your attention now to the top e-mail, the
17 one from you. You sent the note to Steve Brent, Javier Jaraba,
18 Michael Thomas and Vincenzo Santucci. Do you see that?

19 A. Yes.

20 Q. Who is Javier Jaraba?

21 A. He was in the risk management organization. He also
22 reported to Cliff. He had previously run the QC and QA process
23 for Full Spectrum.

24 Q. Who is Mr. Santucci?

25 A. Vince Santucci reported directly to me. He ran Full

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O'Donnell - direct

1 Spectrum's structured loan desk, which was an underwriting
2 group that reviewed loans that had significant exceptions. So
3 CLUES refers that a normal underwriter in the center could not
4 approve.

5 Q. Why did you forward the e-mail to those four recipients?

6 A. I wanted to make sure they were aware of the QoG reprieve.

7 Q. Why did you want to make them aware of the QoG reprieve?

8 A. It was important for them to know. Steve currently managed
9 the quality process, Javier ran the fraud control unit and had
10 a lot of interaction with the fraud group, fraud control group
11 at corporate. Michael did all the reporting for both Central
12 Fulfillment and for my group. And Vince looked at very
13 difficult loans. I wanted him to be aware of it as well.

14 Q. If we can move forward to early 2008. Did you have an
15 understanding of how the quality control review process
16 operated in the, say the first quarter of 2008?

17 A. Quality control, the corporate quality control?

18 Q. Yes.

19 A. Yes, I did.

20 Q. Can you explain how that worked?

21 A. Corporate would select randomly and in some cases a
22 targeted fashion a percentage of the loans funded from a prior
23 month. They would review those loans and underwrite them just
24 as the underwriter should have, and determine whether or not
25 those loans were of investment grade. Then they would provide

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O'Donnell - direct

1 feedback to each division, including Full Spectrum, about the
2 results.

3 Q. How did they provide feedback about the results?

4 A. They sent us weekly reports of loans that they had
5 completed preliminary audits on, and they would ask us for
6 feedback. If they had any questions or had spotted issues on
7 the loans.

8 Q. What type of feedback did they ask for?

9 A. Sometimes it was as simple as asking for a missing document
10 that they couldn't find in the loan file. Other times it would
11 be asking for information from the underwriter or processor
12 about what he or she was thinking when they made the decision
13 about calculating income or accepting an explanation of credit
14 or making an exception on the loan.

15 Q. Did there come a time in around the first quarter of 2008
16 when you noticed some kind of a change in the feedback that you
17 were receiving from corporate quality control?

18 A. The level of feedback went up significantly. The volume of
19 loans that was coming back from corporate QC was much higher
20 than we were used to.

21 Q. How did you in particular become aware of that?

22 A. The group that interacted on a regular basis with corporate
23 QC reported to me. It was led by Steve Brent.

24 Q. The initial feedback that you received from the corporate
25 quality control, did those contain initial findings on loans?

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O'Donnell - direct

1 A. They did. They contained both initial findings and loans
2 that had been finalized with a particular rating.

3 Q. Is there a term for the initial finding that you received?

4 A. No. We would see the loan -- the audit had been completed
5 and a response was requested from corporate QC. So they would
6 tell us that preliminarily it might be graded as an SUS, but
7 that rating or any other rating applied wouldn't be finalized
8 until they had kind of closed the case.

9 Q. The initial feedback that you received, is that what's
10 called a potential SUS or an initial SUS?

11 A. Initial SUS, yes.

12 Q. Is what you observed an increase in a number of initial SUS
13 findings?

14 A. Yes.

15 MS. MAINIGI: Objection.

16 THE COURT: Overruled.

17 A. Yes. To the point that we had to move additional staff
18 into our Full Spectrum's corporate QC group.

19 Q. Why did you have to move additional staff?

20 A. We didn't have the capacity to handle the volume of loans
21 that were being sent to us to coordinate responses and get back
22 to corporate QC on.

23 Q. At that point did you make any recommendations to anyone to
24 address the increase in initial SUS findings?

25 A. In the first quarter?

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O'Donnell - direct

1 Q. Yes.

2 A. I continued to make the same recommendations. I wanted to
3 change the process in Central Fulfillment to reintroduce
4 underwriters and improve the loan quality.

5 Q. Were underwriters brought back into the process at that
6 time?

7 A. They were not. Unfortunately, we had laid off a high
8 number of underwriters, and the decision was made to maintain
9 the current Central Fulfillment model.

10 Q. Did you have any regular meetings about quality issues with
11 any Full Spectrum executives around the first quarter of 2008?

12 A. We had regular monthly meetings on loan quality. Whenever
13 we had corporate QC results get finalized for a particular
14 month, we would share those results inside the management team
15 at Full Spectrum.

16 Q. Which executives attended those regular meetings?

17 A. The managing directors of Greg Lumsden, Rebecca Mairone,
18 Cliff Kitashima, Lloyd Sergeant, Scott Bridges, myself, Loren
19 Rodriguez, Ron Staake, who is our CFO, top members of my team
20 like Steve Brent or Michael Burns, who would actually be
21 presenting the data, and some members from -- Wade Comeaux and
22 some members, not every time, but often from his team as well.

23 Q. Is Ms. Mairone attend any of those meetings?

24 A. She did.

25 Q. Did she attend those meetings regularly?

D9R3BAN3

O'Donnell - direct

1 A. She did.

2 Q. Did there come a time when Greg Lumsden, Mr. Lumsden
3 expressed a reaction to you about the initial SUS findings in
4 the first quarter of 2008?

5 A. Yes.

6 Q. What did he say to you?

7 MR. HEFTER: Objection, your Honor, as to Ms. Mairone.

8 THE COURT: This will be received as to the banks but
9 not Ms. Mairone.

10 A. Mr. Lumsden wrote an e-mail to me and others stating that
11 Full Spectrum had a reputation for no longer fighting very hard
12 on corporate QC audits, and that we needed to do a lot of work
13 to get our corporate QC rating back in line. And that he
14 wanted me to take a look at my resources, put more people into
15 the review process, and fix the problem with our QC ratings.

16 Q. Mr. O'Donnell, ask you to turn to tab 264 in your binder.
17 Do you recognize that document?

18 A. I do.

19 MS. NAWADAY: We offer Plaintiff's Exhibit 264 into
20 evidence.

21 MS. MAINIGI: No objection, your Honor.

22 MR. HEFTER: No objection, your Honor.

23 THE COURT: Received.

24 (Plaintiff's Exhibit 264 received in evidence)

25 Q. Ms. Michaud, can we go to page three of the document and

D9R3BAN3

O'Donnell - direct

1 blow up the first paragraph.

2 Mr. O'Donnell, can you read that paragraph for us.

3 A. "This is in addition to the issues we have with stated.

4 First, corporate has stated now that our quality from

5 approximately August through December is the worst of any

6 division. Part of the data comes not just from our overall SUS

7 ratings, but from EPDs, early payment defaults. Second, our

8 new business model and our ability to manage quality are now in

9 question. Third, corporate states that FSL no longer fights

10 like it used to on the SUSs. FSL just gives in, quote unquote.

11 Fourth, we must not worry about expenses in getting our house

12 in order on this topic."

13 Q. Mr. O'Donnell, do you have an understanding of what EPDs or

14 early payment defaults are?

15 A. Those are loans where the borrower has fallen delinquent

16 within the first 60 or 90 days after receiving the loan. Right

17 out of the box they're having trouble in making payments.

18 Q. Why would an increase in early payment defaults be of a

19 concern?

20 A. It would indicate that loans are being made to people who

21 can't afford the loan.

22 Q. If I can direct your attention to "corporate states that

23 FSL no longer fights like it used to on the SUSs." What did

24 you understand that to mean?

25 A. That corporate -- Greg is talking about my group here,

D9R3BAN3

O'Donnell - direct

1 because my group was responsible for meeting with corporate QC
2 and handling the rebuttal process. And he's saying we were no
3 longer fighting that hard. We're just giving in and rolling
4 over and accepting whatever rating that's been given initially
5 by corporate QC.

6 Q. What does it mean to fight on an SUS?

7 A. I think he's referring to the rebuttal process. So,
8 corporate QC, like any auditor, you're never happy to see them
9 come, and when they come with bad results, our job was to dig
10 in on their review, and try to rebut it try to change the
11 rating. And providing documents, having discussions about
12 the -- debate about whether the loan was truly SUS. And try to
13 make our case that the loan rating should be reduced.

14 Q. Can we blow up point two in the same e-mail. Can you read
15 that for us, Mr. O'Donnell.

16 A. "Need resources to challenge and defend our decisions on
17 SUSs with the same passion as the past. How do we do this
18 now."

19 Q. How did you interpret that, Mr. O'Donnell?

20 A. It was criticism that linked to the same comment we just
21 talked about. That the impression was that we didn't have
22 enough people, and we weren't fighting hard enough to debate
23 and rebut findings from corporate QC.

24 Q. Are you familiar with something called the sprint
25 incentive?

D9R3BAN3

O'Donnell - direct

1 A. I am.

2 Q. Can you explain what that is.

3 A. The sprint incentive was a bonus, a temporary bonus program
4 put in place for the QC underwriters that reported to me.

5 Q. What was the bonus offered for?

6 A. Bonus was offered for two things. Getting through and
7 completing the reviews and rebuttal process on the large number
8 of loans that we were faced with. Rebutting with corporate QC
9 and overturning the rating, reducing the rating from SUS to
10 some other less negative rating.

11 Q. Was the sprint incentive your idea or someone else's?

12 A. It came out of my group. So it was my idea.

13 Q. Tell us how that idea came about.

14 A. It was directly -- it came directly after lots of criticism
15 about how the QC process was being managed. The fact that we
16 were being overrun with volume, and the impression was that we
17 weren't fighting hard enough. We were being judged negatively
18 by the level of QC SUSs for our division, and I put something
19 in place to try to attack that QC rating and drive it down.

20 Q. At that time did you express any concerns about the sprint
21 incentive?

22 A. I did.

23 Q. Who did you express those concerns to?

24 A. To my boss Cliff Kitashima.

25 Q. What did you say?

D9R3BAN3

O'Donnell - direct

1 A. Even though I supported the sprint incentive, I recognized
2 the fact that it created some conflict with having one QC
3 underwriter try to overturn the finding of another QC
4 underwriter.

5 Q. Why would that be a conflict?

6 A. Because it didn't change the overall quality of the
7 production, the loans within Full Spectrum. It would only
8 serve to drive down the rating on the loans that had been
9 reviewed. It didn't fix the problem, it just improved the
10 perception of how bad or how good we were doing.

11 Q. Around this same time period, did you have any meetings
12 concerning loan quality with any executives at Countrywide?

13 A. In the middle of March we were asked to come to a business
14 review meeting at Calabasas, where Countrywide was
15 headquartered, and that was a regular occurrence that there
16 were business review meetings. In this particular case, the
17 topic of FSL's quality was on the agenda for quality.

18 Q. When you said we were asked, who was the "we" you were
19 referring to?

20 A. My group was asked to prepare a presentation about FSL's
21 quality.

22 Q. Who in particular?

23 A. Asked or asked to prepare?

24 Q. Let's start with who was asked to come to the meeting.

25 A. Myself and Cliff Kitashima.

D9R3BAN3

O'Donnell - direct

1 Q. Was anyone else invited to the meeting?

2 A. Most of the senior executives from Full Spectrum attended
3 the meetings regularly.

4 Q. So that would include Mr. Lumsden?

5 A. It would.

6 Q. And Ms. Mairone?

7 A. It would.

8 Q. What were you asked to prepare in advance of the meeting?

9 A. We were asked to prepare a presentation that would outline
10 and explain what was going on with Full Spectrum's quality
11 relating to the rapid deterioration and increased SUS rates.

12 Q. Did you prepare a presentation?

13 A. I did with my team prepare a deck, a presentation that
14 outlined the requested information.

15 Q. Who assisted you in preparing the presentation?

16 A. A number of people. Steve Brent from FSL QC department,
17 and Michael Thomas frequently did most of the decks that came
18 out of my area because it included the data and metrics.

19 Q. Did you share the presentation with anyone?

20 A. I did. A head of the meeting in Calabasas, I shared the
21 presentation with my boss, Cliff Kitashima, and then with
22 Rebecca Mairone and then with Greg Lumsden as well.

23 Q. When you shared the presentation with Mr. Kitashima, did he
24 have any reaction to the presentation?

25 A. He did. He anticipated that the way that I had built the

D9R3BAN3

O'Donnell - direct

1 presentation was going to be controversial within FSL. Because
2 I was pointing to the Central Fulfillment model and the change
3 that we had made in processing as the reason for the -- the
4 primary reason for the problem SUS files that we were seeing.

5 MR. HEFTER: I move to strike as non-responsive.

6 THE COURT: I'm going to sustain that objection, but
7 on a different ground. I've been troubled that many of the
8 questions call for an opinion, in effect, opinions or
9 characterizations as opposed to conversations.

10 So I will infer that your belatedly raised objection
11 was an objection to the question, and I will sustain the
12 objection and strike the answer.

13 MR. HEFTER: Thank you, your Honor.

14 Q. Mr. O'Donnell, did you share the presentation with
15 Mr. Kitashima?

16 A. I did.

17 Q. What, if anything, did he say to you after reviewing the
18 presentation?

19 MR. HEFTER: Your Honor, hearsay as to Ms. Mairone.

20 THE COURT: Yes. This will be received only as to the
21 banks. Go ahead.

22 A. He instructed me that I should expect a lot of push back
23 about the content of the presentation.

24 Q. Did you say anything in response to him?

25 A. I did.

D9R3BAN3

O'Donnell - direct

1 Q. What did you say?

2 A. I told him that I was confident that the data was accurate
3 that it told the right story about what was going on with our
4 quality, and I was prepared to take whatever feedback, positive
5 or negative, resulted.

6 Q. You mentioned you shared the presentation with Ms. Mairone?

7 A. I did.

8 Q. Did Ms. Mairone review the presentation?

9 A. She did. We reviewed it together over the phone.

10 Q. Did she say anything in response -- did she say anything to
11 you about the presentation?

12 A. She did.

13 Q. What did she say?

14 A. She took issue with several slides within the deck and
15 asked that they be removed.

16 Q. Did she give you a reason?

17 MR. HEFTER: Your Honor, I'll move to strike as
18 non-responsive as well as the objection that you --

19 THE COURT: No, I don't think so. I think this was in
20 conformity with the Court's instructions. Overruled. Go
21 ahead.

22 Q. What, if anything, did Ms. Mairone say to you about the
23 presentation?

24 A. She took issue with the FSL QC and QA, the review we had
25 done on loan files. She felt that process still was

D9R3BAN3

O'Donnell - direct

1 insufficient and unreliable. And she didn't want us to be
2 focused on that in any way in the deck, and she wanted those
3 slides removed.

4 Q. Did you say anything in response to her?

5 A. I tried to show her the value. To explain where the data
6 came from. And we were in disagreement about the content.

7 Q. You said you tried to show her the value, but did you
8 actually say anything in response to Ms. Mairone?

9 A. I took a list of all the slides that she wanted to remove,
10 made notes on my copy of the presentation where she had asked
11 that they be reviewed, I drew lines through them.

12 Q. What happened next?

13 A. The call ended. I prepared for the meeting the next day.
14 And in the morning of that day, Greg requested that we come to
15 his office, Rebecca, Cliff and I, to review the deck that we
16 intended to share at the meeting in Calabasas.

17 Q. Had you made any presentations -- sorry.

18 Did you make any changes to the presentation prior to
19 that meeting?

20 A. I didn't make any material changes to the presentation, no.

21 Q. Who was in attendance at the meeting?

22 A. In Greg's office?

23 Q. Yes.

24 A. Greg Lumsden, Cliff Kitashima, Rebecca and myself, and
25 perhaps David Swain who was a pricing executive.

D9R3BAN3

O'Donnell - direct

1 Q. What happened at the meeting?

2 A. We were waiting for Greg to finish a phone call. Rebecca
3 and Cliff were both paging through the deck while we waited.
4 She noticed I had not removed the slides, and she commented to
5 me, I thought I told you to remove those slides. And I said I
6 chose not to. Decided not to.

7 Q. What, if anything, did Ms. Mairone say in response?

8 A. She was angry and she said if -- if you won't listen, then
9 we'll get somebody who will.

10 Q. Did Mr. Kitashima say anything at this meeting?

11 A. At the meeting, he did.

12 Q. What did he say?

13 A. He tried to play kind of arbiter between us as we explained
14 the deck to Greg. And tried to be supportive of me to make
15 sure the information stayed in the deck. And explained why it
16 was important to share the full story of what was happening
17 with our quality. And the reasons behind it.

18 Q. Did Mr. Lumsden speak at that meeting?

19 A. He did.

20 Q. What did Mr. Lumsden say?

21 A. Greg requested that a number of the slides that Rebecca had
22 issues with, rather than be removed, they be put in the
23 appendix of the deck.

24 Q. Did you move those slides to the appendix?

25 A. I did.

D9R3BAN3

O'Donnell - direct

1 Q. Was your presentation shown to anyone else?

2 A. At that meeting, no.

3 Q. Was there a meeting that followed with any Countrywide
4 executives?

5 A. There was. At the business review meeting.

6 Q. Who was in attendance at that meeting?

7 A. Drew Gissinger chaired that meeting. He was the president
8 of Countrywide Home Loans. In attendances was most of the
9 executives from Full Spectrum.

10 Q. Where did that meeting tack place?

11 A. In the board room in Calabasas, California.

12 Q. Was your presentation shown to Mr. Gissinger?

13 A. He had a copy of the presentation, yes.

14 Q. Did anyone walk through the presentation at that meeting?

15 A. My recollection is we didn't get very far through the
16 presentation at all, maybe a couple of -- or few pages.

17 Q. Did you conduct the presentation?

18 A. I did not. I did not speak at the meeting.

19 Q. Who did?

20 A. Cliff Kitashima was responsible for walking us through the
21 deck.

22 Q. What, if anything, did Mr. Gissinger say?

23 A. He was very angry. Didn't pay much attention to the
24 presentation itself. He was basing his concern about Full
25 Spectrum, the corporate QC reports that he had apparently seen.

D9R3BAN3

O'Donnell - direct

1 And he made it very clear he was unhappy with --

2 THE COURT: So Mr. O'Donnell, this is an example of an
3 issue I need to ask your assistance on. You're not a lawyer
4 and therefore you're not familiar with the rules of evidence,
5 but they are quite strict. And they have a purpose, which is
6 to sharpen and clarify what is received in evidence in a court
7 of law, which is very different from every day conversations.

8 So the question was: What, if anything, did
9 Mr. Gissinger say.

10 And your answer was: He was very angry. Didn't pay
11 much attention to the presentation itself. He was basing his
12 concern about Full Spectrum on the corporate QC reports that he
13 had apparently seen, and made it very clear he was unhappy
14 with -- and then I interrupted.

15 No person could ascertain from that answer what
16 portion of your answer is referring to what he said, and what
17 portion of your answer was referring to your perceptions or
18 your opinions or whatever.

19 Now, no one can be expected to remember exact words of
20 a conversation, except for in very unusual circumstances. But
21 one can remember, if one remembers the conversation, what was
22 said, as opposed to how one might characterize what was said.
23 So, I need to ask your help in making that distinction.

24 So let's put the question again. What, if anything,
25 did Mr. Gissinger say?

D9R3BAN3

O'Donnell - direct

1 MR. HEFTER: Your Honor may we approach on this issue?

2 THE COURT: All right.

3 (Continued on next page)

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D9RTBAN4

O'Donnell - direct

1 (At side bar)

2 MR. HEFTER: As your Honor pointed out, this has been
3 a pattern in his testimony, and I think the way your Honor
4 approaching is fine for now. And we'll move to strike that
5 last answer as non-responsive as well as hearsay, consistent
6 with your ruling with respect to John Boland. And so I think
7 with respect to this answer, I think your Honor is pretty clear
8 with the witness and he can answer about anything he said. I
9 just point out, your Honor, this has been a recurring pattern.

10 THE COURT: Wait a minute. You're not a potted plant,
11 you could have brought this to -- I wonder who first said that.
12 You could have brought this to the Court's attention much
13 earlier, which you didn't. You didn't even move to strike that
14 last answer until now at the side bar. So I don't know what it
15 is that you're saying, but the burden is on you.

16 MR. HEFTER: I understand.

17 (Continued on next page)

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D9RTBAN4

O'Donnell - direct

1 (In open court)

2 THE COURT: To be clear, we will strike the last
3 answer, but put the question again.

4 What did he say?

5 THE WITNESS: He said if we didn't improve our QC
6 results, and I don't remember the exact wording, but it was
7 game over, the division could not continue to exist.

8 THE COURT: OK. Go ahead, counsel.

9 BY MS. NAWADAY:

10 Q. Did you discuss what happened at the meeting with
11 Mr. Kitashima?

12 A. I did.

13 Q. When was that?

14 A. Cliff and I rode to the meeting together and we rode back
15 to Pasadena together from Calabasas. We discussed the meeting
16 in the car on the way back.

17 Q. And what, if anything, did you say to Mr. Kitashima?

18 MR. HEFTER: Your Honor, hearsay to Ms. Mairone.
19 Apologize, withdrawn.

20 THE COURT: Pardon?

21 MR. HEFTER: Withdrawn.

22 THE COURT: OK. Go ahead.

23 Q. What, if anything, did you say to Mr. Kitashima?

24 A. I said that Drew had failed to understand that Cliff and I
25 were no longer in charge of the day-to-day loan manufacturing

D9RTBAN4

O'Donnell - direct

1 process. He was blaming us for the quality of the loans at
2 Full Spectrum when we didn't run the business, and I was very
3 concerned that I particularly was going to be held responsible.

4 Q. What, if anything, did Mr. Kitashima say to you?

5 MR. HEFTER: Now I raise it, your Honor, hearsay to
6 Ms. Mairone.

7 THE COURT: Yes. So this answer will be received as
8 to the banks but not to Ms. Mairone.

9 A. He told me he was concerned as well. I don't remember the
10 exact words, but Cliff was concerned, and he didn't reassure me
11 the way he normally did. I think he -- well, he said that the
12 beating that we had taken at the meeting left him feeling the
13 same way, that we were going to be blamed for the quality.

14 Q. You said you didn't run the business any more. What did
15 you mean by that?

16 A. Didn't have responsibility for supervising the underwriters
17 and funders as I had previously. We were only in an oversight
18 and monitoring function in the company.

19 Q. And who did have that responsibility?

20 A. The leadership of Central Fulfillment, Wade Comeaux and
21 Rebecca Mairone.

22 Q. What happened when you got back to Pasadena?

23 A. I don't remember if it was that night or the next, but I
24 put my concerns down in writing to Cliff in an email.

25 Q. And what concerns did you put down in writing?

D9RTBAN4

O'Donnell - direct

1 A. Coming off the meeting the prior day, I was concerned that
2 FSF quality was to the point where some bad things were going
3 to happen, including us being -- he and I, specifically me
4 being held accountable, and that our new owners, Bank of
5 America, were not going to be impressed with the ability -- my
6 ability to manage quality, and I probably wouldn't have a role
7 in the organization going forward. I would lose my job.

8 Q. Did you send that email to anyone?

9 A. I didn't.

10 Q. Did you show it to anyone or share it in any way?

11 A. I did. When I finished that email, I noticed that Cliff
12 was still in his office in Pasadena, and I walked into his
13 office and sat down in front of him and read it to him.

14 Q. And what, if anything, did he say in response?

15 A. He was sympathetic. He didn't disagree. And he encouraged
16 me to think before I sent that email and consider the likely
17 implications.

18 Q. Did he say what the likely implications were?

19 A. I think I voiced what I thought the implications were
20 first, that I thought that sending the email would be slitting
21 my own throat at Full Spectrum.

22 Q. Mr. O'Donnell, can you direct your attention to tab 81 of
23 your binder. Do you recognize this document?

24 A. I do.

25 MS. NAWADAY: Your Honor, we offer Plaintiff's Exhibit

D9RTBAN4

O'Donnell - direct

1 81 into evidence.

2 MS. MAINIGI: No objection.

3 MR. HEFTER: No objection, your Honor.

4 THE COURT: Received.

5 (Plaintiff's Exhibit 81 received in evidence)

6 Q. Mr. O'Donnell, can you tell us what this document is?

7 A. This is the draft email that I was just referring to.

8 Q. Could we blow up the first two paragraphs of the email.

9 Mr. O'Donnell, can you read that passage for us.

10 A. I am very concerned about the way loan quality is presently
11 being managed. Since early December, we produced daily, weekly
12 and monthly reports that clearly demonstrate the level of
13 manufacturing quality coming from the line is substandard.
14 While a short term dip in quality was factored into the
15 decision to radically change our fulfillment model, we show no
16 signs of improvement. In fact, we see continued deterioration
17 and increased exposure to investor kick outs due to poor file
18 quality.

19 Both you and I have been very vocal about the poor
20 quality being produced and the potential risk this presents to
21 the division. However, we have not seen any evidence that our
22 warnings are being taken seriously, and I'm certain that
23 nothing is going to changes as long as Rebecca continues in her
24 present role. In my opinion, her tenure with FSL has been the
25 epitome of operational negligence. The remaining 5,000

D9RTBAN4

O'Donnell - direct

1 employees within FSL are being placed at risk due to her lack
2 of concern for the very basics of our business.

3 Q. What was the risk that you were referring to here?

4 A. They would lose their jobs.

5 Q. Did you discuss this email with anyone else or share it
6 with anyone else?

7 A. I don't believe I did.

8 Q. Did there come a point when you approached the United
9 States Attorney's Office with information about the Hustle?

10 A. Yes.

11 Q. And when, approximately, was that?

12 A. In February, late February of 2012.

13 Q. Did you provide documents to the government?

14 A. I did.

15 Q. Did you prepare any declarations?

16 A. I did.

17 Q. Do you have any potential for financial gain if the United
18 States is successful in its action?

19 A. I do.

20 Q. And what is your understanding of that?

21 A. My understanding is that if the government is awarded some
22 form of damages that I can earn a percentage of those damages
23 up to a maximum of \$1.6 million.

24 Q. Mr. O'Donnell, why did you decide to present information
25 concerning the Hustle to the United States Attorney's Office?

D9RTBAN4

O'Donnell - direct

1 A. I had seen and read in the media reports of a settlement
2 that was being worked on, for lack of a better term, between
3 the government and a number of large banks.

4 MS. MAINIGI: Objection, your Honor.

5 THE COURT: Come to the side bar.

6 (Continued on next page)
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D9RTBAN4

O'Donnell - direct

1 (At side bar)

2 THE COURT: This obviously would not come in normally
3 on direct unless it's anticipation of rebutting some cross. So
4 I assume you're going to be inquiring into his motivations for
5 bringing this action.

6 MS. MAINIGI: Well, I think the government has
7 inquired. I was going to ask whether he was a whistleblower,
8 obviously, and whether he stood to gain financially from the
9 matter. But in terms of asking open-ended questions about his
10 motivations, I was really going to rely more on the documents
11 that exist in the record.

12 THE COURT: So what's he going to say?

13 MS. NAWADAY: Well, Mr. O'Donnell has been deposed
14 twice on his motivations for being a whistleblower, so I did
15 anticipate that he would be cross-examined on exactly that.

16 THE COURT: But what's he going to say specifically in
17 the pending question?

18 MS. NAWADAY: I anticipate what he will say is that he
19 saw something about the service of settlement between the
20 Department of Justice and several large banks, and he saw they
21 concerned FHA loans, and he thought there were big problems
22 that had been missed concerning loans sold to Fannie Mae and
23 Freddie Mac.

24 MS. MAINIGI: Your Honor, this is also the subject of
25 a motion in limine. It's severely prejudicial to bring this in

D9RTBAN4

O'Donnell - direct

1 in the middle of Mr. O'Donnell's testimony.

2 THE COURT: The settlements with the other banks?

3 MS. MAINIGI: Correct.

4 THE COURT: I think the way to handle it is I will
5 allow him to say that, from what he had read in the media, he
6 felt that the government might have missed or might not have
7 the information that he had about this matter, and so he came
8 forward. That I would permit. But I don't think he should get
9 into the government's settlements with other banks and things
10 like that. I do think that is potentially prejudicial and not
11 particularly probative. So on a 403 basis, I will limit it in
12 that fashion.

13 Do you want to talk to him for a second and give him a
14 heads up on that so he can confine his answers accordingly?

15 MS. NAWADAY: Sure.

16 THE COURT: Or another way to do it is by leading
17 questions, which I would allow for that purpose.

18 MS. MAINIGI: We prefer that.

19 THE COURT: OK.

20 MR. HEFTER: Could we have a quick second?

21 THE COURT: Yes.

22 (Pause)

23 THE COURT: I assume your direct is going to end in
24 about five minutes or so?

25 MS. NAWADAY: This was the last question.

D9RTBAN4

O'Donnell - direct

1 THE COURT: That's fine. So we'll break for lunch at
2 that time. Now at some point I need to tell the jury -- and
3 maybe this is a good time to tell them, but if you prefer, I
4 will hold it for now -- that the question of damages is not
5 before them. So maybe this is a good time.

6 MS. MAINIGI: You mean after Mr. O'Donnell is done?

7 THE COURT: Yeah.

8 MR. HEFTER: Thank you.

9 (Continued on next page)

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D9RTBAN4

O'Donnell - direct

1 (In open court)

2 THE COURT: Go ahead, counsel.

3 BY MS. NAWADAY:

4 Q. Mr. O'Donnell, without getting into anything that you saw
5 in the media or anything like that, can you just tell us why
6 you became a whistleblower, and was there any information you
7 believe was not currently at that time in the government's
8 possession?

9 A. I believe the government didn't have any information about
10 the Hustle and the fact that loans had been sold to GSEs and
11 others that clearly didn't qualify, and that because they were
12 unaware of it, no one was being held accountable.

13 Q. And who in particular do you mean by the GSEs?

14 A. Fannie Mae and Freddie Mac.

15 Q. And you said the loans didn't qualify. Can you clarify
16 what you meant by that?

17 A. They were not investment grade.

18 MS. NAWADAY: Your Honor, may I have a moment to
19 confer, please?

20 THE COURT: Yes.

21 MS. NAWADAY: We pass the witness, your Honor.

22 THE COURT: All right. So Mr. O'Donnell, why don't
23 you step down for now. I'm going to excuse the jury in a
24 minute for lunch, and you should be back at 2 o'clock.

25 THE WITNESS: Yes, sir.

D9RTBAN4

1 THE COURT: Ladies and gentlemen, I wanted to mention
2 one thing. The witness made a reference to damages or monetary
3 recovery at the end of the case. The law in this kind of case
4 is that what you need to determine is whether or not any given
5 party is liable for fraud. That's called liability. If you
6 determine there is liability, then I determine what amounts of
7 money are to be paid. So you don't have to worry about that
8 part of the case. Under the law, that's for me, not for you.
9 So for you, it's just a question -- not "just a question," it's
10 a hotly disputed question, the question for you is whether or
11 not any given defendant is liable on these fraud charges.

12 However, you now have, over lunch, your first
13 deliberation, and it is on the following important issue. We
14 could either go from two to four without a break, like we did
15 yesterday, or we could go from two to like quarter of five with
16 a break. So either is fine with me. I have other matters, but
17 I will take them up after you're gone. But you have now seen
18 it both ways, with a break or without a break. So why don't
19 you confer among yourselves and let me know before we start at
20 2 o'clock. Just so let my courtroom deputy know if -- the
21 advantage, if you go without a break, we end earlier, the
22 disadvantage is it's two hours without a break. So either one
23 is fine with me. You let me know right before lunch and we'll
24 proceed accordingly.

25 We'll see you back here at 2 o'clock.

D9RTBAN4

1 (Jury not present)

2 THE COURT: So several items to discuss. First, how
3 long does bank counsel want on cross?

4 MS. MAINIGI: Your Honor, we're anticipating
5 approximately four hours.

6 THE COURT: Well, it will be, as I told the
7 government, not approximately, it will be four hours or less
8 for sure. The government only took three hours and 45 minutes,
9 so they were very modest in their use of their time.

10 And how about counsel for Ms. Mairone?

11 MR. HEFTER: Your Honor, we request three hours. And
12 hopefully that amount of time will shorten, shrink, given what
13 the bank's counsel does. And I would just --

14 THE COURT: Obviously this is a very important witness
15 and I will give you three hours if that's what you're
16 requesting. But I find it hard to believe, given how similar
17 the issues are, that it wouldn't be repetitive of what they
18 would cover in their four hours.

19 Have you conferred?

20 MR. HEFTER: We will confer, and I will try to be not
21 repetitive or cumulative in my questioning. I would say, your
22 Honor, as pointed out, this is a very important witness.

23 THE COURT: That's why, tempted though I was -- let me
24 put it this way. There is no precedential value whatsoever to
25 the fact I gave the government four hours on direct or you

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1 folks seven hours on cross. This is an unusual witness.

2 Yes.

3 MR. MUKASEY: Judge, may I raise or return to the
4 issue of the Googling of the juror?

5 THE COURT: Yes.

6 MR. MUKASEY: Your Honor should direct your wrath at
7 me and nobody else. There was a misunderstanding on our team,
8 and I take responsibility for that as the leader of the team,
9 that the Googling was limited to the in-house, in-court voir
10 dire process. There was Googling done after court for the
11 purpose, which we understood to be permitted, of checking on
12 whether any juror had a disqualifying issue that may not have
13 been raised during jury selection.

14 THE COURT: Before you continue, let me place on the
15 record the only -- this question first came up in the telephone
16 conversation and I allowed defense counsel and all counsel to
17 put in briefing, and the only briefing I received was on
18 September 23rd, 2013 from Williams & Connolly, but on behalf of
19 all defendants: And the first paragraph reads as follows:

20 "At the Court's invitation, we write in support of
21 defendants' request for leave to conduct internet research of
22 potential jurors during voir dire. The Court permitted such
23 research last year in *United States v. Gupta*. As in that case,
24 the Court shall permit internet research to discover any
25 information that may require disqualifying a juror and to

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1 permit counsel to make informed use of their peremptory
2 challenges. Internet research during voir dire is now a widely
3 accepted practice, and as discussed below, lawyers are
4 sometimes criticized for not using such a readily available
5 resource."

6 So I don't see how there could have been any
7 misunderstanding that this was to be during voir dire for the
8 purpose of allowing you to exercise your peremptory challenges
9 to the fullest reasonable extent.

10 MR. MUKASEY: If it makes any difference, and I agree
11 with you, your Honor. That is clear, and we were not attentive
12 to it. And again, I will take responsibility for that. If
13 it's of any mitigation, my understanding, because I'm a bit of
14 a dinosaur in this area, is that it is possible to do searches
15 and make yourself as the searcher anonymous. And the person at
16 my firm who performed the search did not do that. There was no
17 attempt to be evasive or hide this fact, which I hope goes to
18 the fact that it was a good faith misunderstanding and not an
19 attempt to secretly circumvent the Court's ruling.

20 THE COURT: I'm not inferring, but I want to question
21 the person who did this.

22 MR. SULLIVAN: Your Honor, could I just -- I haven't
23 read it yet, but I have a fascinating opinion was just handed
24 to me from the New York State Bar Association Committee on
25 Professional Ethics that the Court might find informative.

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1 THE COURT: It's referenced in the letter. It is, in
2 my view, totally irrelevant, but I will get back to that in a
3 minute. I want it finish my conversation with Mr. Mukasey.

4 MR. SULLIVAN: Sorry.

5 THE COURT: So I'm going to need to question -- I
6 understand your accepting responsibility, but I need to
7 question the person who did the actual research, the actual
8 search.

9 MR. MUKASEY: I want you to know it was me who said
10 let's Google the jurors. It was my misunderstanding.

11 THE COURT: You know, even without going through all
12 the requirements of the Federal Rules of Criminal Procedure, I
13 accept your guilty plea.

14 MR. MUKASEY: I don't have the 40 years of impeccable
15 reputation that Mr. Sullivan does, but I hope I have about 20,
16 and I hope your Honor will take this --

17 THE COURT: Mr. Mukasey, you have an excellent
18 reputation, and I have had the great privilege of having you
19 before me, and you have always conducted yourself in good
20 faith. So I don't question your good faith. In order to see
21 what action, if any -- and I'm hoping the answer will be none
22 or very little, but to see what action, if any, I need to take
23 with respect to the jury, I need to question -- I need to find
24 out exactly what your associate did.

25 MR. MUKASEY: I think I have the answer.

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1 THE COURT: OK.

2 MR. MUKASEY: Jurors were Googled off of Google as --

3 THE COURT: When was this?

4 MR. MUKASEY: Tuesday afternoon.

5 THE COURT: Sorry?

6 MR. MUKASEY: Tuesday afternoon or evening.

7 THE COURT: After the jury had been selected.

8 MR. MUKASEY: Jurors were Googled. To the extent that
9 Google allows being linked or being transferred to social
10 media, including Linked In, that was done. I gather you can do
11 Facebook or Twitter. I don't know any of the results here. I
12 personally I don't know any of the results of any of this
13 stuff. I don't think Mr. Hefter or I do.

14 MR. HEFTER: I confirm that, your Honor.

15 MR. MUKASEY: And searches of public databases were
16 done, again for the purpose of making sure we didn't miss a
17 criminal conviction, we didn't miss somebody who worked for
18 Bank of America with Ms. Mairone or with Ms. Mairone at JP
19 Morgan. So I don't think that falls into the same category.
20 But there were social media that are available through a Google
21 search that were looked at.

22 MR. SULLIVAN: Your Honor, could I bring one thing to
23 the Court's attention? Because I know all of us have one goal,
24 and that is to save this jury and not have an impact on the
25 jury and put this fire out.

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1 First off, I know this is the first trial that I have
2 Googled, I think. I have not -- I don't Google, but we did
3 Google. We sought permission.

4 THE COURT: I know your partners are undoubtedly very
5 upset about your technical deficiencies.

6 MR. SULLIVAN: I have gotten away with not knowing for
7 so long because they're so good. But let me bring to your
8 attention that the New York Bar Association Committee on
9 Professional Ethics actually says -- I'll read you two lines,
10 and I admit I haven't read the rest of it -- the committee
11 concludes that attorneys may use search engines and social
12 media services to research potential and sitting jurors without
13 violating the rules as long as no communication with the juror
14 occurs.

15 And my suggestion is if we tell the jurors that we
16 have a brief and efficient jury selection process, that the
17 rules provide that counsel can check, and the Court let them
18 check during voir dire, that might be the end of it and we can
19 all have peace and save this jury. I'm just troubled if it's
20 not addressed that way that we're all going to wonder what
21 they're thinking.

22 THE COURT: Well, first of all, what you're reading,
23 which, needless to say, is not binding on this Court.

24 MR. SULLIVAN: Of course, your Honor.

25 THE COURT: But in any event, the New York State Bar

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1 Association on Professional Ethics, according to your letter --
2 I haven't seen the underlying opinion but I'm sure this is an
3 accurate quote -- concluded that, "An attorney may research
4 potential or sitting jurors using social media services or web
5 sites, provided that a communication with the juror does not
6 occur."

7 Of course, here a communication with the juror did
8 occur in the sense that they became aware that the attorneys
9 for one of the parties had tapped in to their social media. So
10 even under this opinion, I am not sure that there was
11 conformance with this opinion.

12 MR. SULLIVAN: I'm not arguing the point. I read only
13 four lines of it. I would make it available, but it is an
14 indication that someone has thought about post voir dire.
15 That's my only point.

16 MR. MUKASEY: And to the extent you're able to use
17 these services to actually communicate by some sort of message
18 or note, obviously that didn't happen. That would be
19 outrageous. I would focus, just for purposes of protecting the
20 jury and Ms. Mairone, and frankly my co-defendants, on the
21 portion of that juror's note that said he felt intimidated.
22 I'm not sure that is referring to the photographer.

23 THE COURT: He made clear in the robing room, and that
24 was one of the things that gave me some confidence that it was
25 the photographer that he felt intimidated by.

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1 MR. MUKASEY: Not the cyber stalking.

2 THE COURT: Right. But your term is an interesting
3 one. And I think I made a bad joke at the time about just how
4 physically intimidating that particular individual is. But
5 that was -- I think it's clear from the robing room conference
6 that that was his concern. That's why I totally agree with
7 Mr. Sullivan that I think we can save this jury. The question
8 is what we need to do to make sure that everyone's rights are
9 protected and that the Court is assured that this jury has not
10 been materially influenced in any negative respect.

11 MR. MUKASEY: Could we possibly submit maybe a draft
12 instruction during the lunch break for your Honor's
13 consideration?

14 THE COURT: That would be fine. But let me tell you
15 what I'm thinking offhand. I want to hear from the government
16 as well. I'm thinking that the thing to do is to bring the
17 jury out after lunch, or when they come out normally right
18 after lunch, to tell them that through an inadvertent mistake
19 on the part of counsel there was some interaction with their
20 social media a couple of days ago, that that was simply a
21 mistake and it won't happen again, and no one should pay any
22 heed to it, and then ask them does any juror have any problem
23 about that they want to the raise with the Court. If they do,
24 we are to question that juror in the robing room. That's sort
25 of the way I think maybe we should go, off the top of my head.

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1 MR. MUKASEY: I think that's a good start. I might
2 mention or think it would be helpful to mention if your Honor
3 were to introduce that mistake by saying there was permission
4 given to do limited research, electronic research, and then
5 sort of the mistake was made in interpreting that permission.

6 THE COURT: I'll think about that.

7 MR. MUKASEY: I don't want them to think we're --

8 THE COURT: I don't -- I understand what you're
9 saying, but implicit in that is clearly in my view not the
10 case, which is that any reasonable person could ever have
11 interpreted my permission to conclude what your associate did.
12 I am accepting that it was inadvertent and not in bad faith,
13 but I am not accepting that it was remotely within the
14 reasonable confines of the permission given. So I'm not
15 inclined to really give it that aura that your suggestion is
16 contemplating.

17 Let me hear from the government.

18 MR. ARMAND: Your Honor, the government also wants to
19 keep this jury and do everything we can to make sure that we
20 can keep the jury. But I think we would like to get a little
21 bit more information, if we could, about what exactly happened
22 and how and when. And there is some information about Googling
23 and social media, but juror number ten indicated there were a
24 number of other jurors who experienced the same thing. So I
25 think we need to find out what exactly happened, when, and how,

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1 and then figure out what type of instruction would be best to
2 give them.

3 THE COURT: Why don't we do this, who is the associate
4 that did this?

5 MR. MUKASEY: She's a first-year associate.

6 THE COURT: I understand that you are, as the
7 excellent person you are, taking the rap, but she has the
8 information we need.

9 MR. MUKASEY: I'll get her.

10 THE COURT: I think we need to have her here just to
11 get information. So we will, unless she's here now --

12 MR. MUKASEY: She is here now, but I would like to
13 download the information we need.

14 THE COURT: We'll talk with her here in court why
15 don't we say five minutes before 2 o'clock. That will give
16 everyone a chance to reflect on all this.

17 MR. CORDARO: Your Honor, there is one other issue I
18 would like to raise with the Court. And I only raise this now
19 because I would like to do it before Mr. O'Donnell's cross
20 starts.

21 The government made motions in limine to preclude
22 evidence under 404(a) pertaining to witness opinion statements
23 about certain people being honest at Countrywide. The Court
24 granted that motion.

25 The United States made a motion in limine to preclude

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1 evidence from witnesses -- lay witnesses offering legal
2 conclusions pertaining to fraud. The Court granted that
3 motion.

4 During Mr. Thomas' cross-examination, Mr. Sullivan
5 asked him at one point if he thought -- speaking of
6 Mr. Lumsden, he regarded him as an honest, straightforward
7 person. The government objected, the Court sustained the
8 objection. That was within the scope of the order, but we
9 figured it was an accident and we let it go.

10 However, I have seen some paperwork now that suggests
11 it was perhaps not an accident, because we now have the
12 deposition testimony designated by the defense for John Boland.
13 And if you look at some of the testimony that the defense has
14 designated, it reads, in response to a question: Were there
15 others in Full Spectrum Lending whose judgment you trusted?
16 Yes. Who were those? There were many people at Full Spectrum.
17 Full Spectrum was a great company -- I mean a great division
18 inside Countrywide, which was a great company. I generally
19 trusted the people, and people for the most part did the right
20 thing the majority of the time. I mean people were honest.

21 That all has been designated.

22 THE COURT: I get the idea, because clearly that is
23 totally contrary to the motion in limine that I granted. So I
24 think you've placed your adversary on notice that the Court
25 will, if there is any violation further of my ruling, will take

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1 appropriate action.

2 While we're on that subject, that really dovetails in
3 part with the question about Ms. Simantel's -- is that the
4 right person, the person you wanted the ruling on?

5 MS. MAINIGI: Yes, your Honor.

6 THE COURT: And one of the government's arguments for
7 the admission of that, we'll talk more about this later, but --
8 I don't want argument now, but one of the government's
9 arguments was that it was necessary rebuttal to the kind of
10 stuff that you just read me from the deposition, arguments of
11 the defendants.

12 So let me put the defense on notice that the
13 government really has a tactical choice here in the motion in
14 limine. I have excluded all that was just read. It seems to
15 me self-evident everything just read was excluded by the motion
16 in limine. But since you're offering it, and if the
17 government, instead of maintaining its position that it's
18 inadmissible, wants to admit it, then there's no question
19 whatsoever at that point that the Simantel email will come into
20 evidence. So you don't have to -- the government doesn't have
21 to speak about that now, I want to alert you to the dangerous
22 situation that the defense is placing itself in.

23 With respect to the letter I received this morning
24 from defense counsel on the \$165 million income or monies that
25 the bank defendants received, I thought defense made this a

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1 closer call than I had originally imagined. So we'll have
2 argument on this maybe not until Monday, the government doesn't
3 have to put in a response, but if they wish to put in a
4 response, they're welcome to say by Monday morning.

5 I note for the defense that you did not, however,
6 directly address motive, which was one of the arguments the
7 government made. I don't want anything further in writing, but
8 you may be able to address it orally.

9 Anything else?

10 MR. CORDARO: No, your Honor.

11 MS. MAINIGI: So you'll hear the Simantel motion this
12 afternoon after you adjourn the jury?

13 THE COURT: Yes.

14 MR. MUKASEY: I'm sorry to go back to my sad issue.
15 Juror ten wrote at the end of his --

16 THE COURT: Yes, you were kind enough to hand me your
17 copy.

18 MR. MUKASEY: If I remember correctly, it says I can't
19 be objective.

20 THE COURT: And I questioned him about that and he no
21 longer was saying that.

22 MR. MUKASEY: I wasn't clear about that.

23 THE COURT: It may have been partly because he did it
24 partly through a nod of the head, but I think the record will
25 be clear. But if anyone thinks it's unclear, I will question

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1 him again. But I think that it was crystal clear that once he
2 learned the photographer, which was the main source of his
3 feeling of intimidation, was sent by -- was a media person,
4 that that made him feel he could continue, and also coupled
5 with -- because I did tell him about the Court giving
6 permission to Google during voir dire.

7 MR. MUKASEY: My fear was once he recognized it was my
8 firm that did that he could no longer be objective to us.

9 THE COURT: I think he clearly indicated that he no
10 longer had a problem, but I'm willing to question him again on
11 that.

12 You really want me to put that question to him?

13 MR. MUKASEY: Let me think about it over lunch.

14 THE COURT: OK. Very good, we'll see you at five
15 minutes to two.

16 (Luncheon recess taken)

17 (Continued on next page)

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AFTERNOON SESSION

(2:15 p.m.)

(After luncheon recess)

(Jury not present)

THE COURT: The jury has elected to go without a break, but I think we need to bring this matter to a head before we excuse them for the weekend. So I have told my courtroom deputy to tell them that we would go without a break, but we will start a little later because we have some matters to discuss. And we will end at 4 o'clock, so far as they are concerned, no matter what.

So I do want to keep this as efficient as possible.

MR. SULLIVAN: Your Honor, I have an instruction that might help to work with the Court --

THE COURT: OK.

MR. SULLIVAN: -- to calm things down here. It's actually one of the few instructions I have written myself.

THE COURT: And here I thought you were a potted plant.

MR. SULLIVAN: I am when it comes to this.

And by the way, all parties for the defense agree that could be a way to solve the problem.

THE COURT: Well, I will adopt this in part, but I don't think I'll use, for example, "Social media is a strange new phenomenon that is not well understood by people of my

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1 generation." Maybe your generation.

2 MR. SULLIVAN: I accept that correction.

3 THE COURT: But I think something similar to this is
4 probably called for. But let me -- the government wanted to
5 put some questions, I think, to the associate, so let's have
6 her come the microphone.

7 MR. MUKASEY: I have a full debrief from her, so I
8 prefer to be the deponent.

9 THE COURT: No.

10 MR. MUKASEY: OK. Judge, this is Kate Sullivan.

11 THE COURT: Good name.

12 MR. MUKASEY: No relation.

13 MS. SULLIVAN: Hello, your Honor.

14 THE COURT: So Ms. Sullivan, when was the last web
15 search you did for any of the jurors?

16 MS. SULLIVAN: I believe it was about 10 o'clock on
17 Tuesday night.

18 THE COURT: On Tuesday night?

19 MS. SULLIVAN: Yes.

20 THE COURT: So none since then?

21 MS. SULLIVAN: None since then.

22 THE COURT: In terms of Linked In, did you attempt to
23 make access there to all of the jurors?

24 MS. SULLIVAN: I did a search within Google and where
25 Linked In came in, I followed the link.

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1 THE COURT: Were you successful with -- how many
2 jurors were you successful with the Linked In?

3 MS. SULLIVAN: I don't remember exactly, your Honor.

4 THE COURT: Was it like most of them or very few of
5 them?

6 MS. SULLIVAN: I would say probably about half, your
7 Honor.

8 THE COURT: And was there any other search that you
9 made that would have, at their end, been something they would
10 have been aware of?

11 MS. SULLIVAN: Not to my knowledge.

12 THE COURT: Facebook or something like that.

13 MS. SULLIVAN: Not to my knowledge, your Honor.

14 THE COURT: And in the Linked In portion, you were
15 identified by your name and Bracewell & Giuliani or how -- if
16 you had been at their end what would have come up?

17 MS. SULLIVAN: Your Honor, I don't know exactly,
18 except from my own experience with Linked In.

19 THE COURT: You're the right generation.

20 MS. SULLIVAN: My understanding is from time to time
21 Linked In will email Linked In members a marketing email asking
22 them if they would like to sign up for Links Premium, and the
23 sort of come on, the hook is that you can see who had viewed
24 your profile and have sort of a more involved membership. In
25 such emails they would often say your profile has been viewed

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1 six times and you have the opportunity to see the organization
2 from which the person who looked at your profile works.

3 THE COURT: OK. Did the government want to put some
4 further questions?

5 MR. ARMAND: No, your Honor.

6 THE COURT: OK. Very good. Thanks very much. See,
7 that wasn't so bad, was it.

8 All right.

9 MR. MUKASEY: She's done more at this trial than
10 Strassberg now.

11 THE COURT: Let's bring in the jury.

12 (Continued on next page)

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1 (Jury present)

2 THE COURT: So ladies and gentlemen, congratulations
3 on reaching a verdict, we will only go to 4 o'clock today.

4 A matter has come up that I wanted to raise with you.
5 It's not uncommon when jurors are being selected that counsel,
6 with the permission of the Court, will attempt to gain any
7 piece of information they can about you. They go on Google
8 because they want to make sure that the jurors they're
9 selecting are fair and impartial. Obviously, every party here
10 was extremely pleased with every one of you. They all
11 recognized that, and that's why they didn't strike you or -- by
12 strike we mean use their peremptory challenges, not physically
13 strike.

14 But through inadvertence, apparently, a young lawyer
15 went and continued that search during Tuesday, and so some of
16 you may receive information on Linked In or something that a
17 lawyer has accessed your profile or something like that. It's
18 not because they're about to offer you a job or anything like
19 it, it's just they were carrying out this checking and they
20 just went beyond the time when it was permitted. And those
21 mistakes happen, young lawyers make mistakes like that. I just
22 want to make sure that you knew that nothing improper was being
23 done, it was all innocent, and that you should not infer
24 anything whatsoever about anything in the world if you see that
25 your profile was accessed on Linked In or anything like that.

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1 And I know sometimes these notifications you only find out
2 several days later, but this actually ended on Tuesday and it
3 won't continue at any time.

4 Is there anything about that situation that creates a
5 problem for any juror?

6 Very good.

7 All right. Anything counsel needs to raise at side
8 bar?

9 MR. MUKASEY: No, Judge.

10 MR. SULLIVAN: No, your Honor.

11 MR. ARMAND: No, your Honor.

12 THE COURT: Very good. Let's get the witness back on
13 the stand.

14 Cross-examination.

15 CROSS-EXAMINATION

16 BY MS. MAINIGI:

17 Q. Good afternoon, Mr. O'Donnell.

18 A. Good afternoon.

19 Q. My name is Enu Mainigi and I represent the Bank of America
20 defendants in this matter, and I will be asking you some
21 questions.

22 We met before, correct, Mr. O'Donnell?

23 A. We have.

24 Q. We met at your deposition a few months ago, correct?

25 A. In April.

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O'Donnell - cross

1 Q. And then a subsequent deposition.

2 I'm going to start first with some of the documents
3 that the government showed you, actually, and try to review
4 some of those. Do you still have the binder in front of you?

5 A. I do.

6 Q. Let's go ahead and start with tab 20, please. I think it's
7 the second page, Plaintiff's Exhibit 20, which has already been
8 admitted, and I believe that originally you took a look at the
9 first paragraph, does that sound right, Mr. O'Donnell, with the
10 government?

11 A. Earlier today?

12 Q. Yes.

13 A. Yes, I believe that's correct.

14 Q. And there was some discussion of this QoG reprieve, is that
15 fair?

16 A. We did discuss the QoG reprieve, yes.

17 Q. And this email was from Rebecca Mairone, is that right?

18 A. Well, the starter email was from me to several others.

19 Q. Well, the starter email is the email at the bottom,
20 correct?

21 A. I'm sorry, you're right, the original email would have been
22 Rebecca's.

23 Q. And that was Ms. Mairone going out to a number of people
24 within Countrywide, is that fair?

25 A. That's correct, yes.

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O'Donnell - cross

1 Q. Now let's take a look at the paragraph -- the third
2 paragraph in that second page. Could you read that? Let's
3 highlight that third paragraph. And Mr. O'Donnell, can you
4 read that paragraph out loud for us, please?

5 A. This does not mean that we should not be prudent and
6 protect the compliance and quality standards of the company,
7 but we do want you to feel less of a need to double and triple
8 check your work. We also want you to comfortably adapt to
9 using many of the former required checklists and worksheets as
10 job aids like other prime divisions of Countrywide. If we
11 remove a checklist as a requirement in writing, you should not
12 upload it to VLF and only complete it if you feel it's
13 necessary in any point in your development.

14 Q. Let's blow up the next paragraph and read that out loud,
15 please.

16 A. In the end, we must be far more efficient, fund loans with
17 more velocity and have more confidence in our decisions while
18 maintaining prime quality and compliance standards.

19 (Continued on next page)
20
21
22
23
24
25

D9R3BAN5

O'Donnell - cross

1 Q. So, Ms. Mairone in this e-mail is advocating both efficient
2 funding of loans as well as maintaining quality and compliance,
3 is that fair?

4 Is that what she says, Mr. O'Donnell, in this e-mail?

5 A. Among other things, that's correct.

6 Q. Okay. Now, in the prior paragraph I think you had some
7 mention of job aids and checklists. Do you remember discussing
8 that with Ms. Nawaday?

9 A. Earlier today we did, yes. We did discuss job aids and
10 checklists and the difference.

11 Q. Ms. Mairone mentions job aids and checklists in the first
12 paragraph you read, correct?

13 A. She does, yes.

14 Q. What she says is that some of the former required
15 checklists and worksheets are going to be job aids, is that
16 fair?

17 A. It says -- she's asking the employees to adapt to using
18 former checklists and job aids or former checklists and
19 worksheets as job aids.

20 Q. She makes reference to other prime divisions of
21 Countrywide. Do you see that?

22 A. Yes.

23 Q. That would be perhaps the consumer market division of
24 Countrywide?

25 A. That was the other consumer -- directed consumer division,

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O'Donnell - cross

1 yes.

2 Q. CMD, as it's sometimes known, had for quite a long time
3 always processed prime loans, correct?

4 A. That's true. They were the largest prime loan division at
5 Countrywide.

6 Q. In fact, they were the largest prime loan retailer in the
7 country for some period of time, correct?

8 MS. NAWADAY: Objection, your Honor.

9 THE COURT: Sustained.

10 Q. With respect to CMD, is it fair to say that in the
11 processing of prime loans, they used job aids to assist with
12 that processing?

13 MS. NAWADAY: Objection, your Honor.

14 THE COURT: Ground?

15 MS. NAWADAY: Foundation.

16 THE COURT: Lay a foundation.

17 Q. Mr. O'Donnell, you testified earlier with the government
18 you were familiar with what's been marked as Plaintiff's
19 Exhibit 20, correct?

20 A. Yes.

21 Q. You received a copy of this e-mail, correct?

22 A. I did.

23 Q. For various periods of time, you were head of underwriting
24 at FSL, is that fair?

25 A. I was head of underwriting from 2005 through the middle of

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O'Donnell - cross

1 2007.

2 Q. I believe as head of underwriting for FSL, you had some
3 general familiarity with processing at CMD, one of the sister
4 divisions. Is that fair?

5 A. I did learn about CMD's process when I visited the
6 division, yes.

7 Q. In fact, there were other times, as I recall you telling me
8 earlier, you also learned about CMD. Is that fair?

9 A. I did have a general knowledge for what CMD did in terms of
10 how they originated their loans, and how that business was
11 structured.

12 Q. Is it fair to say in processing prime loans within CMD,
13 instead of requiring mandatory checklists, they had job aids
14 that served as a point of reference for their loan processors?

15 A. I don't recall the exact worksheets or job aids they might
16 have leveraged. We had different -- slightly different
17 computer systems than they had. I am not exactly familiar with
18 what type of job aids or worksheets they used.

19 Q. I'm less focused on the specific checklists and job aids
20 that they used. Just the fact -- the inference is clear from
21 the e-mail, I think, that in the other prime division, that
22 they utilized job aids that were a point of reference as
23 opposed to mandatory checklists.

24 THE COURT: You can't testify as to what you think is
25 inferrible. So sustained as to form.

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O'Donnell - cross

1 Q. Is it fair to say within the subprime structure of FSL,
2 there was a need for checklists?

3 A. Within the subprime structure, underwriting and funding
4 structure in FSL, we did leverage checklists.

5 Q. Those checklists were mandatory as far as needing to be
6 filled out?

7 A. Some of them were mandatory, that's true.

8 Q. When you shifted over to the prime processes, some of those
9 checklists were found to be unnecessary, fair?

10 A. I think there were varying opinions. I would not agree
11 that they were unnecessary, but some I believe did believe they
12 were unnecessary.

13 Q. So some checklists after -- was there a discussion had
14 about should we keep this checklist, should we not keep this
15 checklist?

16 A. There were many discussions about the checklists
17 themselves.

18 Q. Ultimately someone made the decision that, okay, we are
19 going to get rid of this particular checklist, correct?

20 MS. NAWADAY: Objection.

21 THE COURT: If he knows, I'll allow him to answer.

22 A. Ultimately there were some checklists that were either done
23 away with entirely or converted to job aid status.

24 Q. By converting them to job aid status, what occurred is the
25 checklist still remained available for reference, is that

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O'Donnell - cross

1 right?

2 A. It was -- the checklist, once it became a job aid, it was
3 no longer mandatory. It was optional for the employee to use
4 or not to use, their choice.

5 Q. Let's take a look at Exhibit 264. Plaintiff's Exhibit 264
6 which is also admitted. I believe you spoke to Ms. Nawaday
7 about this exhibit as it related to the issue of the rebuttals
8 to the SUS. Do you recall that earlier today, Mr. O'Donnell?

9 A. I do recall talking about this exhibit earlier today, yes.

10 Q. Okay. Let's take a look at -- I just want to ask you to
11 look at some other things that are on that same page. If we
12 can take a look at the last page, please.

13 Could you give us the context again, Mr. O'Donnell,
14 for this e-mail exchange.

15 A. This is in March of 2008. And I'm making recommendations
16 to Greg about steps we can take to address the issues that he's
17 raising.

18 Q. Is it fair to say that certain quality issues had been
19 brought to Mr. Lumsden's attention in the March 2008 time
20 period?

21 A. Well, Mr. Lumsden was receiving the reports and information
22 about quality every month.

23 Q. But in particular, is it fair to say that either you or a
24 combination of you and Mr. Kitashima brought a set of quality
25 issues to Mr. Lumsden's attention in this March 2008 time

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O'Donnell - cross

1 period?

2 A. I think he heard -- well, I know he heard from Cliff and I
3 on a regular basis and others as well during this timeframe.

4 Q. Were there a set of quality concerns that you brought to
5 Mr. Lumsden in this March 2008 time period?

6 A. Yes. Consistent with the same approach I had used in prior
7 months, the QA and the corporate QC reports.

8 Q. But was it a greater set of concerns that you brought in
9 the March time period? Because he's responding to some of your
10 e-mails here, correct?

11 A. I think I'm responding to his initial e-mail. And the
12 topic is quality in FSL.

13 Q. Is it fair to say that your view was that Mr. Lumsden
14 always had his eye on quality?

15 MS. NAWADAY: Objection.

16 THE COURT: Sustained.

17 Q. Was Mr. Lumsden concerned about quality within FSL?

18 MS. NAWADAY: Objection.

19 THE COURT: Sustained.

20 Q. Let's go take a look at that paragraph. Let's blow up that
21 top paragraph. That's the one that we looked at before. Now,
22 after that paragraph, Mr. Lumsden has a set of ideas for you
23 there, is that fair?

24 A. He's -- I think he's laying out his thoughts. He says a
25 couple things come to mind, yes.

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O'Donnell - cross

1 Q. Could you read number one, please.

2 A. "Number one. Our plan on stated looks solid."

3 Q. Did you understand him to be referring to stated income
4 loans?

5 A. Yes, I believe that would be related to stated income
6 loans.

7 Q. So there had been some quality issues that had been raised
8 with respect to stated income loans, is that right?

9 A. That's true. We were having high -- a high percentage of
10 our overall SUS finding levels were coming in the area of
11 stated income.

12 Q. Is it fair to say, and you may not have the exact date
13 committed to memory, Mr. O'Donnell. But is it fair to say that
14 by March 17, there was a new plan for stated income loans and
15 that underwriters were required to review stated income loans
16 starting with that date?

17 MS. NAWADAY: Objection.

18 THE COURT: Ground?

19 MS. NAWADAY: Vague and foundation.

20 THE COURT: Pardon?

21 MS. NAWADAY: Vague and foundation.

22 THE COURT: I think the vagueness comes from the fact
23 that it is a compound question.

24 MS. MAINIGI: I can break it down, your Honor.

25 THE COURT: Why don't you rephrase and we'll see if

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O'Donnell - cross

1 there is a foundation issue.

2 Q. Mr. O'Donnell, you are aware of action taken with respect
3 to stated income loans in the March 2008 time period, correct?

4 A. I'm aware of recommendations we made for a new stated work
5 flow, yes, as outlined in this note.

6 Q. Are you aware that there was a change in policy within FSL
7 that required underwriters to review all stated income loans in
8 the March 2008 time period?

9 A. I'm not sure of the exact timeframe but I know that
10 underwriters became reinvolved in reviewing stated income
11 loans.

12 Q. I take it as someone who had oversight over underwriting,
13 that was something that you thought was a positive move?

14 A. That was something that I had been recommending for quite
15 sometime, yes.

16 Q. Number two is the one that you read earlier. Is that
17 right?

18 A. Yes. That's true.

19 Q. Let's go ahead and read number three now. Again, these are
20 Mr. Lumsden's recommendations to you, correct?

21 A. They're his comments, yes.

22 Q. Number three, please.

23 A. "We have many experienced senior level underwriters in many
24 different jobs. We need to marshal their services and
25 experience."

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O'Donnell - cross

1 Q. I take it over the next couple of months, those senior
2 level underwriters in many different jobs were marshaled in a
3 variety of ways, is that right?

4 MS. NAWADAY: Objection.

5 THE COURT: Sustained.

6 Q. Mr. O'Donnell, underwriters were brought back in to stated
7 income loans in March 2008, correct?

8 A. I don't know the exact timeframe, but they were brought
9 back at some point, yes.

10 Q. Underwriters were brought back to all loans at the cleared
11 to close process by April 2008, correct?

12 A. At some point they were brought back, yes.

13 Q. Then by May 2008, underwriters had to review the entire
14 loan file, is that fair?

15 A. I believe that's true, yes.

16 Q. Let's read his number four, please, out loud.

17 A. "What else can we do to improve quality for other products?
18 What do the current stats tell us about non-stated business?
19 Can we pull 50 random files funded in February for a quick
20 look?"

21 Q. So is it fair to say that Mr. Lumsden was looking for other
22 ideas on how to improve quality?

23 MS. NAWADAY: Objection.

24 THE COURT: Sustained.

25 Q. Did you give Mr. Lumsden any other ideas that month to

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O'Donnell - cross

1 improve quality for the other products?

2 A. I was pretty consistent in voicing ideas on what we could
3 do to improve quality beginning in the fall of 2007.

4 Q. In response to number four, do you recall specifically
5 whether you gave Mr. Lumsden any additional ideas?

6 A. I don't recall specifically what I -- if I responded
7 directly to this question.

8 Q. Let's read number five, please.

9 A. "Should we do more with QA?"

10 Q. QA is referring to quality assurance?

11 A. That's true.

12 Q. So, is it fair to say that right around this time, there
13 were significant changes that were going on with the QA
14 process?

15 A. I don't know how you would define "significant."

16 Q. Well, I think there was, is it fair to say there was an
17 attempt to take the QA process and make it more of a predictor
18 of QC during this time period with Mike Burns and his group?

19 MS. NAWADAY: Objection.

20 THE COURT: Sustained.

21 Q. Was a group put together in the spring of 2008 to study the
22 QA process?

23 A. The QA process, as we talked about a little bit earlier
24 today, was under constant review beginning in the summer of
25 2007.

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O'Donnell - cross

1 Q. My question was a bit more focused. Was there more of a
2 focus in the spring of 2008 on the QA process, Mr. O'Donnell,
3 to your recollection?

4 A. I don't recall there being more of a focus, no.

5 Q. You've always felt it was always a focus, QA?

6 MS. NAWADAY: Objection.

7 THE COURT: Overruled.

8 A. My experience, very personal, was that the QA process got
9 plenty of focus from many levels.

10 Q. Could you take a look at number six and please read that
11 out loud.

12 A. "All turn time goals should be suspended and related comp
13 topics."

14 Q. What do you understand that to mean?

15 A. That the goals that had been put in place to move loans
16 more quickly, it's an acknowledgment that they've led to a
17 deterioration in quality.

18 Q. Well, let's focus on all turn time goals should be
19 suspended. What does that mean to you, Mr. O'Donnell?

20 A. That turn time goals that had been introduced previously
21 were being suspended.

22 Q. Okay. And did you execute on that?

23 A. My group wouldn't have had turn time goals, and I wasn't in
24 charge of comp time. So this would not be something that I
25 would execute on.

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O'Donnell - cross

1 Q. To your knowledge, was this done?

2 A. I believe it was, yes.

3 Q. Take a look at Exhibit 266 which the government also showed
4 you earlier, Mr. O'Donnell.

5 MS. MAINIGI: I believe, Alex, let's take a look at
6 page two, first. I believe if I remember correctly it is the
7 paragraph that starts with "enhancement." Let's blow that up.

8 Q. I think you read this with Ms. Nawaday. Do you recall
9 reading that paragraph earlier today, Mr. O'Donnell?

10 A. Yes, I believe we read this earlier today.

11 Q. Let's go ahead and turn to the first page now, please. The
12 date of this e-mail, well, e-mail is from you, is that right,
13 Mr. O'Donnell?

14 A. That's correct.

15 Q. It is dated August 1st, 2007, is that fair?

16 A. That's correct.

17 Q. Just as a frame of reference, is that a couple of weeks
18 before you're about to embark on the pilot for the High-Speed
19 Swim Lane?

20 A. The -- yes, just about two weeks before.

21 Q. Who are you sending this e-mail out to?

22 A. This is being sent to the employees that worked in Central
23 Fulfillment, underwriting, and CFC, which was the central
24 funding group.

25 Q. Did the central funding -- you were head of the central

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O'Donnell - cross

1 funding group?

2 A. I was head of central services, yes, which was underwriting
3 and funding.

4 Q. Did that group essentially become Central Fulfillment then
5 in the October time period?

6 A. Central Fulfillment was really more of a processing. The
7 funders moved into the Central Fulfillment organization. But
8 they only handled the loans that actually funded, not the loans
9 that were just processed or underwritten in the pipeline.

10 Q. So, I take it the purpose of this e-mail is to announce
11 that there are going to be some new work flows such as the HSSL
12 pilot that will be going into effect. Is that fair?

13 A. This e-mail is announcing central service's incentive plan.

14 Q. Well, let's take a look at the first paragraph. If you
15 could read that paragraph out loud, please.

16 A. "As you know, FSL has seen explosive growth in prime
17 fundings over the last several quarters. Although that growth
18 has allowed us to absorb some of the impact relating to
19 deterioration of the subprime market, our struggle to make the
20 full leap to becoming a prime lender is placing significant
21 pressure on our revenues and profits. It is essential that we
22 take significant and immediate steps to grow our total volume,
23 improve our prime application to funding ratios, and reduce our
24 costs per loan. We must have all employees focus on delivering
25 immediate improvements to our prime applications flow throughs,

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O'Donnell - cross

1 turn time, and total funded loan volume."

2 Q. Take a look at the second paragraph please, and read that
3 out loud as well.

4 A. "To that end we will be introducing updated work flows
5 designed to move loans through the pipeline rapidly in early
6 August. The focus will be on eliminating unnecessary delays or
7 subprime process steps for prime applications. In many ways,
8 we continue to manufacture prime loans by sending them through
9 a work flow originally built for subprime. This adds cost and
10 time which negatively impact our flow throughs of applications
11 to funding and allow competitors to steal loans that languish
12 in the pipeline."

13 Q. So this is, I take it, announcing essentially the HSSL work
14 flow, Mr. O'Donnell?

15 A. It says we are going to introduce updated work flows, so
16 the Hustle would have been one of those work flows.

17 Q. That was the work flow that was still in the design phase
18 or about to come out of the design phase in this period of
19 time, correct?

20 A. Right. It was -- the pilot was just about to kickoff in a
21 couple of weeks.

22 Q. One of the motivations for it is, it says, allow
23 competitors to steal loans that languish in the pipeline. Do
24 you see that?

25 A. I do.

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O'Donnell - cross

1 Q. Did FSL have a concern at that point in time that loans
2 were taking too long to process, and that in the interim,
3 customers were going to other competitors?

4 MS. NAWADAY: Objection.

5 Q. Is that what the concern was?

6 MS. NAWADAY: Objection.

7 THE COURT: Sustained.

8 Q. Can you explain to me what that last sentence means,
9 Mr. O'Donnell.

10 A. That if loans languished in the pipeline unfunded, there
11 would be an opportunity for another lender to contact the same
12 borrower and solicit them to take a loan with that bank or that
13 mortgage company.

14 Q. Was that happening to your recollection?

15 A. I didn't manage the pipeline in processing at this time. I
16 only managed the underwriting and funding. But, anecdotally,
17 there were stories that this could happen. That's what I
18 recall.

19 Q. Were you aware of it actually happening, Mr. O'Donnell?

20 A. It was -- it was reported, but I didn't see loan files
21 where that had actually happened.

22 Q. Who did you get the reports from?

23 A. The -- the production management team.

24 Q. There is also reference in that paragraph to subprime
25 process steps. Do you see that?

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O'Donnell - cross

1 A. I do.

2 Q. FSL, Full Spectrum Lending, had historically been
3 Countrywide's subprime shop, correct?

4 A. That's true. The division was originally started to make
5 just exclusively subprime loans.

6 Q. Now it always had a few prime loans that it processed, is
7 that fair?

8 A. I don't know about always. But at some point we started to
9 have the ability to process and fund some prime loans.

10 Q. I think we referred to earlier the sister shop CMD is the
11 entity that really was processing a lot of the prime loans for
12 the years prior to 2007, is that fair?

13 A. Their primary focus was the prime market and EA, yes.

14 Q. As a general matter, subprime loans are riskier than prime
15 loans, is that right?

16 A. Generally, that's true.

17 Q. And partly for that reason, subprime loans and prime loans
18 are processed differently, is that right?

19 A. In FSL they were processed differently, yes.

20 Q. To your knowledge generally in the industry, are subprime
21 loans and prime loans processed differently?

22 MS. NAWADAY: Objection.

23 THE COURT: Sustained.

24 Q. FSL had built a process to -- that was a process to process
25 the subprime loan going into 2007, is that right?

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O'Donnell - cross

1 A. Can -- I'm not sure I understand.

2 Q. That was a poor question.

3 The model for processing loans that FSL had in the
4 summer of 2007 was essentially a subprime process, is that
5 fair?

6 A. It was both. We were doing both prime and subprime at that
7 time. We had distinct work flows for both.

8 Q. Basically, in the 2007 summer time period, a working group
9 that you're referring to as a steering committee working group
10 was put together to design the High-Speed Swim Lane, is that
11 right?

12 A. The steering committee was put together to develop the
13 strategy of what we would do to move from subprime model to a
14 prime model.

15 Q. That's because the subprime market had essentially dried up
16 by the summer of 2007?

17 A. It -- my recollection it was well on its way to drying up,
18 it's true.

19 Q. You were on that steering committee, is that right?

20 A. I was.

21 Q. So the reference, coming back to this document, the
22 reference here to eliminating unnecessary delays or subprime
23 process steps for prime applications is referring to the
24 mandate essentially of the working group for High-Speed Swim
25 Lane, is that right?

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O'Donnell - cross

1 A. In part, I think that's true.

2 Q. Let me ask you to turn to another document you looked at
3 with counsel I believe yesterday, PX 49. Was this the document
4 that was referring to some incident that occurred at NCA where
5 a loan processor had cleared something to close?

6 A. Right. This is the one we talked about yesterday
7 afternoon.

8 Q. Okay. Now, this involved a couple of loan processors, is
9 that right?

10 A. Yes, I think this is -- it was written to highlight two
11 instances.

12 Q. A couple of instances of loan processors doing something
13 that they shouldn't be doing, is that right?

14 A. That's correct.

15 Q. It's an incident involving loan processors within NCA,
16 fair?

17 A. That's true.

18 Q. And not loan processors that are in the High-Speed Swim
19 Lane, is that fair?

20 A. It didn't exist at that time.

21 Q. Now, if you take a look at the e-mail, let's take a look at
22 the top e-mail. The pages are not numbered. Top of page five.
23 Let's focus on the e-mail there to John Boland, cc Robert Price
24 from Phyllis Gilliard. Could you read that out loud, please
25 Mr. O'Donnell.

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O'Donnell - cross

1 A. "I support any findings that these be sent directly to
2 Javier for investigation. I spoke with Jessica regarding her
3 incident and the excuse was not acceptable to me. I have taken
4 all authority from Jessica and Sarah's entire team."

5 Q. Okay. Now, who is Ms. Gilliard? What was her role at the
6 time?

7 A. Phyllis was a Full Spectrum employee. She had been
8 assigned to the NCA group to help with their assimilation into
9 Full Spectrum. She worked in underwriting previously and had
10 operations experience as well.

11 Q. So, who is the Javier referenced there?

12 A. That's Javier Jaraba. He was in charge, among other
13 things, of a fraud investigations unit for Full Spectrum.

14 Q. It looks like Ms. Gilliard sent this matter for
15 investigation to Mr. Jaraba then, is that right?

16 A. I think she's saying she would support it if someone was
17 going to send it to Javier.

18 Q. Do you know what happened with this incident,
19 Mr. O'Donnell?

20 A. I don't know outcome of the investigation, no.

21 Q. Did you do any follow up on this incident at the time to
22 see what had happened?

23 A. I don't recall what I did in terms of follow up.

24 Q. It certainly appears that someone is contemplating sending
25 this for investigation, right?

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O'Donnell - cross

1 MS. NAWADAY: Objection.

2 THE COURT: Sustained.

3 Q. The last sentence "I have taken all authority from
4 Jessica's and Sarah's entire team." What's your understanding
5 of what that means?

6 A. I am not sure what that means. Phyllis would not have been
7 in a position to suspend authority from anyone. She could make
8 a recommendation to FSL risk management, but I am not sure what
9 she was saying she had done here.

10 Q. It would be authority to do what?

11 A. I am not sure. It says all authority.

12 Q. So, essentially the entire team, she's at least making a
13 recommendation to suspend all authority for the entire team, is
14 that right?

15 MS. NAWADAY: Objection.

16 THE COURT: Sustained.

17 Q. Is it fair to say that, in your estimation -- this e-mail
18 was ultimately forwarded to you, Mr. O'Donnell, right?

19 A. It was. I believe Robert Price copied me on the note he
20 sent to Cheri Shine.

21 Q. Do you know why you were copied on this?

22 A. At the time Robert reported to me.

23 Q. Let's take a look at the first page, please. And the
24 e-mail at the bottom in the last paragraph. If we can blow up
25 that paragraph right there. This is from Mr. Price who

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O'Donnell - cross

1 reported to you.

2 Could you read that out loud, Mr. O'Donnell.

3 A. "In short, along with the strong message about moving loans
4 which is good, we must mention that doing the right thing is
5 equally important part of the recipe for success. Thanks."

6 Q. Let me come back, Mr. O'Donnell, to something you discussed
7 yesterday. Do you remember discussing the prime CLUES accept
8 process with Ms. Nawaday?

9 A. Yes, yes, yesterday, I do.

10 Q. The prime CLUES accept -- prime CLUES accept has two
11 meanings, is that correct?

12 A. Has two meanings?

13 Q. Prime CLUES accept can refer to the output from CLUES, is
14 that right?

15 A. Right, that's what that is the meaning. Prime CLUES accept
16 is the answer from the underwriting engine for a prime loan.

17 Q. I'm sorry. Prime CLUES accept also referred to a work flow
18 for processing prime loans within FSL, is that right?

19 A. We did have a work flow for processing prime CLUES accepts
20 that we did refer to as the PCA process.

21 Q. It was a process that was used in approximately the 2006,
22 2007 time period for the prime loans that you did have within
23 FSL?

24 A. I think that's true. We started it -- it started to be
25 used more and more frequently beginning in 2006 as our -- the

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O'Donnell - cross

1 level of applications for prime loans increased.

2 Q. Loan processors and underwriters were involved in this PCA
3 work flow, right?

4 A. That's true in the PCA, that's true.

5 Q. You talked yesterday about clearing conditions. Do you
6 remember that?

7 A. I do.

8 Q. Clearing to close also, correct?

9 A. That was part of the PCA process, yes.

10 Q. Every loan is cleared to close at some point, correct?

11 A. Hopefully, yes.

12 Q. So --

13 A. Not every loan. Some loans actually do get turned down.

14 Q. That comes at the end of the process if the loan is
15 suitable to keep going; is that fair?

16 A. That's true. That was a critical step before you could
17 actually go to draw loan documents and go to a closing.

18 Q. The conditions get cleared prior to cleared to close, is
19 that right?

20 A. As it's drawn up, the conditions are supposed to be
21 gathered and cleared before a cleared to close is issued, yes.

22 Q. In the subprime model, underwriters both cleared conditions
23 to close, excuse me.

24 In the subprime model, underwriters both cleared
25 conditions and cleared to close, is that right?

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O'Donnell - cross

1 A. In the subprime model, underwriters and processors could
2 clear conditions. There were types of conditions. They were
3 classified differently. So based on the classifications, some
4 could be cleared by an underwriter, and some other lower level
5 conditions could in fact be cleared by a processor.

6 But ultimately you're right, the underwriter was the
7 person responsible for issuing the cleared to close.

8 Q. Now, in the PCA work flow which was just for prime loans,
9 correct?

10 A. Prime CLUES accepts, yes.

11 Q. In the PCA work flow, underwriters cleared loans to close,
12 is that right?

13 A. That's true.

14 Q. But in the PCA work flow, loan processors were able to
15 clear certain conditions, is that right?

16 A. The loan processor in the PCA work flow, loan processors
17 could earn condition sign off authority. So that they could
18 review and sign off on certain conditions.

19 Q. They could earn that authority by going through appropriate
20 training and certification?

21 A. That's correct.

22 Q. There was a working group within FSL that arrived at this
23 decision to put this PCA process in place, is that right, in
24 the 2006 time period?

25 A. For the --

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O'Donnell - cross

1 MS. NAWADAY: Objection.

2 THE COURT: I'll allow it. You may answer.

3 A. Can you repeat, please?

4 Q. Sure. The PCA process came into existence in about 2006,
5 is that right?

6 A. That's correct.

7 Q. And as I understand it, was there a working group that
8 decided to get together to come up with a right design for PCA?

9 A. It was a largely within the underwriting group. I believe
10 we piloted the process in the Chandler, Arizona location under
11 Jim White.

12 Q. Did you have various subject matter experts come together
13 from the PCA -- or excuse me -- from the underwriting group to
14 be part of this committee?

15 A. I think the initiative started by Jim making a proposal to
16 me. That he thought there might be a way to more effectively
17 process certain prime loans. Specifically CLUES accepts.

18 Q. And what was happening to the prime loans such that
19 Mr. White decided to make the recommendation to your
20 understanding?

21 A. We -- well, as you said, Full Spectrum was a subprime,
22 largely a subprime company. We didn't have a lot of
23 experience, anyone in the company, originating or closing,
24 processing, closing prime loans.

25 So we set up a PCA process, to make sure that where we

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O'Donnell - cross

1 were committing to a borrower on a prime loan, they really did
2 qualify.

3 Q. Did the PCA process speed up the amount of time it took to
4 process a prime loan?

5 A. Speed up the -- reduce the amount of time?

6 Q. Yes. Did you reduce the amount of processing time for a
7 prime loan with PCA?

8 A. We did.

9 Q. Do you have a sense of how much?

10 A. I don't remember exactly. But, it was a significant
11 improvement.

12 Q. Is it fair to say the mandate then of the High-Speed Swim
13 Lane group was to take a look at the PCA process, and study it
14 to determine how they could improve upon it?

15 A. I think the -- the working group you are asking about?

16 Q. Yes.

17 A. Yeah. The mandate of the working group was to come up with
18 an enhanced work flow. And specifically develop speed -- speed
19 based swim lanes based on the type of loan and the risk of that
20 loan.

21 Q. One of the things that they did, the High-Speed Swim Lane
22 work group, was look at the existing PCA process, correct?

23 A. Yeah. Definitely. We looked at the PCA process to see --
24 we made strides with that already. We were looking to see how
25 it could be adjusted to improve our ability to close prime

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O'Donnell - cross

1 loans.

2 Q. You, Mr. O'Donnell, viewed the PCA process to be a success,
3 is that right?

4 A. I did. We were funding prime loans, we were funding them
5 with good quality, and we had improved the speed with which we
6 were able to move a loan from start to finish.

7 Q. When High-Speed Swim Lane was designed, did some of the
8 loans that used to be PCA loans go into the High-Speed Swim
9 Lane pilot?

10 A. Well, the pilot was a small number of loans. But yeah, I
11 would imagine some of the loans -- certainly they were all
12 supposed to be prime CLUES accepts. So some of the loans would
13 have gone from our standard work flow to the new Hustle pilot.

14 Q. Other PCA loans may not have gone through the High-Speed
15 Swim Lane work flow, correct? They would have continued to be
16 cleared by an underwriter?

17 A. During the pilot?

18 Q. Yes.

19 A. Yeah. Not everybody participated in the pilot.

20 Q. Let me jump ahead to Central Fulfillment. High-Speed Swim
21 Lane was one of the work flows in Central Fulfillment, correct?

22 A. That's correct.

23 Q. And there were two other work flows within Central
24 Fulfillment, is that fair?

25 A. There would be. There was work flow for CLUES refers,

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O'Donnell - cross

1 which were for loans that didn't qualify based on the initial
2 run of CLUES. And there was a work flow for loans that were
3 excluded from the Hustle process that contain more risk.

4 Q. Okay. So, CLUES refers went through a different work flow
5 than High-Speed Swim Lane in Central Fulfillment, correct?

6 A. That's correct.

7 Q. And that work flow had an underwriter fingering the loan to
8 close, right?

9 A. Right. It was Countrywide's practice that if CLUES gave
10 you a refer decision, the loan had to be manually underwritten
11 by a underwriter.

12 Q. Those CLUES refers loans that got a CLUES refer continued
13 to essentially follow the old subprime process within FSL, is
14 that right?

15 A. Not -- not exactly the old subprime process, but there was
16 underwriter involvement in the decisions on those loans, yes.

17 Q. Were underwriters generally clearing conditions?

18 A. They would -- again, in that process the conditions were
19 classified differently. And there were specific conditions
20 that only an underwriter could sign off on.

21 Q. Then, so that's one work flow, and we've got High-Speed
22 Swim Lane. Then there was a third work flow, is that right?

23 A. Correct.

24 Q. That work flow was for exclusions from the High-Speed Swim
25 Lane, is that right?

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O'Donnell - cross

1 A. That's right.

2 Q. So this would be loans that had gotten a CLUES accept but
3 were excluded from the High-Speed Swim Lane?

4 A. That's right.

5 Q. This would include, for example, purchases?

6 A. Purchases were one of three or four exclusion, yes.

7 Q. So, only refinancings went through the High-Speed Swim
8 Lane, is that right?

9 A. True. And CMD's business was really all about purchase.

10 Full Spectrum was basically a cash out refinance business
11 model. We didn't do a lot of purchase transactions in our
12 division.

13 Q. So but the purchases you did do were cleared to close by an
14 underwriter, is that right?

15 A. That's what was supposed to happen, yes.

16 Q. What other exclusions existed that were cleared to close by
17 an underwriter?

18 A. I think we had loans over \$1 million had to involve an
19 underwriter. And manufactured homes. And transactions where
20 there was a -- where it was a non-arm's length transaction. So
21 if you sold your home or to someone you were related to, not on
22 the open market, not involving a realtor or the MLS.

23 Q. Anything else come to mind?

24 A. The list wasn't very big. So, I think that's -- that's
25 what I recall.

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O'Donnell - cross

1 Q. The High-Speed Swim Lane pilot was from mid August through
2 the end of September of 2007, right?

3 A. That's true.

4 Q. Then Central Fulfillment kicked off on October -- for
5 October 1st, is that right?

6 A. Early October, yeah, I think that's correct.

7 Q. That's when the three work flows came into place,
8 October 1st?

9 A. Well, yeah. For the most part I think that's true.

10 Q. As part of Central Fulfillment, there was a reorganization
11 that occurred, is that right?

12 A. Well, Full Spectrum went through a reorganization to
13 facilitate the rollout of Central Fulfillment.

14 Q. So, different people -- did people switch around job titles
15 as well?

16 A. Some people did, yes.

17 Q. Is it fair to say that as part of the Central Fulfillment
18 re-org, that individuals that were previously known as
19 underwriters became loan specialists?

20 MS. NAWADAY: Objection.

21 THE COURT: If you know, you may answer.

22 THE WITNESS: I'm sorry, your Honor. I didn't hear.

23 THE COURT: I'm sorry. If you know from personal
24 knowledge, you can answer that.

25 A. Can you repeat?

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O'Donnell - cross

1 Q. Sure. I think this is an issue we talked about in your
2 deposition. As part of Central Fulfillment, and the
3 reorganizations that were taking place, isn't it true that some
4 underwriters became loan specialists?

5 A. Yes, that's true.

6 Q. So one day, someone was called an underwriter, and the next
7 day they were called a loan specialist, right?

8 A. That's true. Their role changed from underwriter to loan
9 specialist or junior underwriter to loan specialist. And they
10 would have had a title change.

11 Q. That loan specialist on day two still had all of the
12 training that they had gained as an underwriter, right?

13 A. That's true.

14 MS. MAINIGI: Your Honor, may I approach?

15 THE COURT: Yes.

16 MS. MAINIGI: Alex, can you put up PX 427, please.

17 Q. PX 427 is an org chart of Central Fulfillment. Does it
18 look familiar to you, Mr. O'Donnell?

19 A. I don't think I've seen this document before. But I've
20 seen org charts that look similar to this before.

21 MS. MAINIGI: I think it's PX 427, Alex. I think the
22 government marked it as an exhibit.

23 THE COURT: It is a plaintiff's exhibit already in
24 evidence.

25 Q. Taking a look at this org chart for Central Fulfillment.

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O'Donnell - cross

1 James White. Mr. White was an underwriter, right?

2 A. He was a center manager, so he ran the Chandler fulfillment
3 center.

4 Q. But he was an underwriter, correct?

5 A. At one time in his career? Yes.

6 Q. How about Mr. Sallis. Mr. Sallis was an underwriter,
7 correct?

8 A. At one time in his career, yes.

9 Q. Mr. Price, he was an underwriter?

10 A. He was.

11 Q. How about Adela Zamarripa, was Ms. Zamarripa to your
12 knowledge an underwriter?

13 A. She was.

14 Q. Donna Braaten, was she an underwriter?

15 A. She was.

16 Q. And An Pham, was she an underwriter?

17 A. Yes, An was an underwriter at one point.

18 Q. Norma Frias, was she an underwriter?

19 A. She was.

20 Q. How about Amy Adler, was she an underwriter?

21 A. I believe she was, yes.

22 Q. And Beth Ahern, was she an underwriter?

23 A. She was.

24 Q. And Kim Knouse, was she an underwriter?

25 A. I believe she was.

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O'Donnell - cross

1 Q. And Ron Gillet. Underwriter?

2 A. He was.

3 Q. Ryan Solomon, was he an underwriter?

4 A. He was.

5 Q. And Aaron Portenier, was he an underwriter?

6 A. Aaron was, yes.

7 Q. Desiree Flores, was she an underwriter?

8 A. She was.

9 Q. How about Schuyler Yost, underwriter?

10 A. He was.

11 Q. And Dylan Schafer, also an underwriter?

12 A. He was.

13 Q. And Patrick Pigeon, underwriter?

14 A. He was.

15 Q. Ron Cannon, underwriter?

16 A. He was at one time.

17 Q. And Ryan Chiotti, also an underwriter?

18 A. He was at one time, yes.

19 Q. A number of people that had underwriter training were
20 involved with Central Fulfillment, is that fair?

21 A. Yes, that's true.

22 Q. We were talking a little bit about the quality issues that
23 came up in the spring of 2008 a little bit earlier, do you
24 recall that?

25 A. Yes.

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O'Donnell - cross

1 Q. It was your view, Mr. O'Donnell, that by the spring of
2 2008, there were manufacturing quality issues within FSL, is
3 that right?

4 A. It was my view that before that, but yes, they certainly
5 existed in the spring of 2008.

6 Q. As we talked about earlier, you and some of your colleagues
7 brainstormed about ways to alleviate or mitigate those quality
8 issues, is that fair?

9 A. I'm not sure if I understand what you mean.

10 Q. Did you come up with suggestions on how to alleviate the
11 quality issues?

12 A. Yes. I mean, that was part of my job in risk management to
13 manage risk and try to come up with solutions when there were
14 issues relating to loan quality.

15 Q. Is one of the ways that you came up with to alleviate
16 quality issues changing the work flow model?

17 A. Yes. I recommended that the work flow model be change.

18 Q. Ultimately the work flow model was changed, is that right?

19 A. Ultimately, but long after I first made that suggestion.

20 Q. Ultimately, the quality improved within FSL in the second
21 quarter of 2008, correct?

22 A. That's true. The quality began to improve in the second
23 quarter.

24 MS. MAINIGI: Your Honor, may I approach?

25 THE COURT: Yes.

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O'Donnell - cross

1 Q. I'm going to give you a couple of exhibits, Mr. O'Donnell.

2 A. Thank you.

3 Q. Mr. O'Donnell, PX 197 is an e-mail exchange with which
4 you're involved, is that right?

5 A. Can you blow it up? You're really challenging me now. 20
6 years ago I could read this.

7 MS. MAINIGI: Let's go down, Alex, to the first
8 page --

9 THE COURT: No, it's not in evidence yet.

10 MS. MAINIGI: I'm sorry. I don't believe there is an
11 objection to Plaintiff's Exhibit 197, your Honor.

12 THE COURT: Let's find out. Any objection?

13 MS. NAWADAY: Just one moment, your Honor. No
14 objection your Honor.

15 THE COURT: 197 is received.

16 (Plaintiff's Exhibit 197 received in evidence)

17 MS. MAINIGI: Let's look at the first page. And Alex,
18 let's see how much we can blow up that first paragraph, the one
19 that starts "after experiencing challenges."

20 Q. The context for this, Mr. O'Donnell, is this an e-mail that
21 you sent to Robert Vanderberry at Bank of America, is that
22 right?

23 A. I really can't read the paper copy so it would be helpful
24 if I could just see.

25 Q. Sure. Let's let you --

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O'Donnell - cross

1 A. Yeah. Bob Vanderberry, yes.

2 Q. Who was Mr. Vanderberry?

3 A. He was a vice president or senior vice president from Bank
4 of America. I believe he reported to Patrick McCallister. He
5 had been assigned to help with the transition of this part of
6 Countrywide Full Spectrum into Bank of America.

7 Q. Let's take a look at that second paragraph and feel free to
8 look at the entire e-mail, but I am going to focus on that
9 second paragraph. Let's blow up that middle paragraph. And
10 then if could you read that out loud for us.

11 A. "After experiencing challenges in Q4 2007 and early
12 Q1 2008, we made changes to work flows, training content,
13 authority certification and compensation plans that have play
14 an important role in returning the division's results to the
15 target environment for quality as defined by corporate audit
16 performance. We've effectively leveraged our central model and
17 the results demonstrate our management team's ability to be
18 responsive to rapid market shifts as well as internal standard
19 adjustments."

20 Q. You're talking about FSL obviously in that paragraph, is
21 that right?

22 A. I am.

23 Q. You're reporting to Mr. Vanderberry your views on what
24 happened the prior year, correct?

25 A. Yeah. Bob and I had talked about this as part of his

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O'Donnell - cross

1 orientation to our company and getting to know each other.

2 Q. Can we go to the second page, please. If we could blow up
3 the second paragraph at the top there.

4 Let's just back up and see. Who is Vicki Lynn Olson,
5 Mr. O'Donnell?

6 A. She was -- I believe she played a role at Bank of America
7 working for Bob overseeing kind of the quality reporting, kind
8 of the same kind of QA process for the old Bank of America
9 centers.

10 Q. Had you been having a similar discussion with Ms. Olson
11 regarding quality at FSL the prior year?

12 A. I hadn't met Vicki, but Bob had her call me and tried to
13 solicit some thoughts from me on things I had done in the past
14 to manage quality. They were having some challenges.

15 Q. Could you read that paragraph out loud, please.

16 A. "The trending illustrates that the remediation enacted with
17 legacy FSL during Q1 2008 had the desired impact of bringing
18 quality back to the target environment. We'll be finalizing Q3
19 corporate QC results by midweek, and it will be our second
20 consecutive quarter under 4.5 percent. The early results from
21 October funded loans also appear to indicate we remain on
22 target. Both CMD and WLD experienced sharp upticks in Q3
23 finding rates, a trend that appears to be continuing in early
24 October audit findings."

25 Q. So essentially, is it fair to say that you're communicating

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O'Donnell - cross

1 that the remediation efforts that were undertaken in this
2 spring of 2008 were successful?

3 A. Yeah, I am. I'm saying they had the desired impact on our
4 QC.

5 Q. And QC is the quality control ratings, is that right?

6 A. I'm sorry. On the corporate QC SUS rates, yes.

7 Q. You got the quality control ratings to the level that you
8 thought was appropriate, correct?

9 A. For me I'd like to see them at zero, but that's not
10 reasonable. But, they were much closer to the mark that we
11 were trying to reach, yes.

12 MS. MAINIGI: Can we come back, Alex, to the first
13 page again. Let's blow up that same middle paragraph.

14 Q. In your view, the way that you achieved those quality
15 improvements were by all the things you state there, correct?

16 A. Among other things, yes.

17 Q. Let's go over those. It says we made changes to work
18 flows. What does that mean?

19 A. We updated the process by which loans were funded.

20 Q. So, does that mean you went back essentially to a subprime
21 model for work flow?

22 A. Well, we had to make changes to our work flow during this
23 timeframe, because the products we were offering were changing
24 as well. We began to offer FHA loans which required
25 underwriters to sign off on every loan. So that was one of the

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O'Donnell - cross

1 factors that ultimately helped us get our quality back in line
2 as well.

3 Q. How about loans that were not FHA. Did you make changes to
4 the work flows for those loans also?

5 A. We did.

6 Q. What were those changes?

7 A. We brought back the underwriter being involved in the
8 cleared to close process.

9 Q. So that was in that April time period?

10 A. I don't remember the exact month, but it was in around that
11 time, yes.

12 Q. Then you say training content. What did you mean by
13 training content?

14 A. I don't remember the exact training that was going on at
15 this time. But it appears we made some change to the training
16 that was available.

17 Q. You thought that had an improvement on the quality, is that
18 right?

19 A. True. I believe we were again sharing the results of our
20 QC and QA audits, which effectively helped to show people where
21 they were making mistakes and trained them to do a better job.

22 Q. How about authority certification. What does that mean?

23 A. So, we had a pretty rigorous process through which you had
24 to pass in order to get authority. And we made sure that
25 people who were signing off on loans had passed those tests and

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O'Donnell - cross

1 loan file reviews and kind of a second signing process by a
2 more senior underwriter. That they had gone through that
3 successfully.

4 Q. What do you mean when you say, Mr. O'Donnell, we've
5 effectively leveraged our central model?

6 A. Full Spectrum always operated under a central model. For
7 control purposes, even when we were a subprime company, we
8 underwrote and funded our loans centrally. It was just -- it
9 was easier to train people, it was easier to apply oversight.
10 When you want to make changes, people were located under one
11 roof so it was -- it was a lot easier for control. And what we
12 had done is leveraged the fact that everybody was in one place,
13 or four places or five places, but we used that advantage to
14 target places -- areas where we were weak.

15 Q. Then you indicate that the results demonstrate our
16 management team's ability to be responsive to rapid market
17 shifts as well as internal standard adjustments. What did you
18 mean by that?

19 A. Well, as we talked about earlier, many of the folks that
20 you pointed out on the org chart earlier I hired or even
21 supervised at other companies. I had a lot of respect and
22 confidence in their ability to manage underwriting and funding
23 and loan quality. So, when we gave them the tools to
24 effectively do their job again, they came through. They
25 delivered.

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O'Donnell - cross

1 Q. These are the same people that had been around during the
2 subprime model, correct?

3 A. Not all. But many of them, yes.

4 Q. These were the same people that were trying to make the
5 work flow High-Speed Swim Lane operate and function, correct?

6 MS. NAWADAY: Objection.

7 THE COURT: I'm sorry, I didn't hear the objection.
8 Forgive me. Sustained.

9 Q. Was it the same people that had essentially been in the
10 subprime work flow that operated the High-Speed Swim Lane work
11 flow Mr. O'Donnell?

12 MS. NAWADAY: Objection.

13 THE COURT: Sustained.

14 Q. Did you bring in for the High-Speed Swim Lane work flow a
15 new set of people?

16 MS. NAWADAY: Objection.

17 THE COURT: Ground?

18 MS. NAWADAY: Vague.

19 THE COURT: I think it is a little. Sustained.

20 Q. So the individuals that were involved in the High-Speed
21 Swim Lane work flow, Mr. O'Donnell, in terms of the loan
22 processors, were they the same loan processors and underwriters
23 that had been involved in the subprime work flow?

24 A. Some of them were the same, but they were operating in
25 different capacities and the senior management over the whole

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O'Donnell - cross

process was completely different.

(Continued on next page)

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O'Donnell - cross

1 BY MS. MAINIGI:

2 Q. And I'm sorry if I missed it, but can you explain to me
3 what you meant by rapid market shifts?

4 A. Well, this note was from 2009.

5 Q. Yes.

6 A. From probably the summer of 2007 through the middle of 2009
7 the mortgage market changed regularly, the products, the
8 companies that were involved, the standards.

9 Q. So it was a tumultuous time?

10 A. To say the least.

11 Q. Now take a look at DX 73, please, Mr. O'Donnell. And that
12 is an admitted exhibit. This was attached to your email to
13 Mr. Vanderberi can you explain to us what it is?

14 A. Looks like two pages this is a summary of QC random audits
15 for both stated loans and loans with all income documentation
16 type, so stated and non-stated loans, I guess.

17 Q. And why did you forward this attachment to Mr. Vanderberi.

18 A. At this point I don't think Bob and others from Bank of
19 America might have been receiving or even had the ability to
20 receive all the reports from our corporate QC. So I was
21 sharing with him the comparison for our division versus the
22 other Countrywide divisions.

23 Q. And so let's take a look -- FSL is the division, correct?

24 A. It's one of the divisions here, yes.

25 Q. But that's the division we're focused on?

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O'Donnell - cross

1 A. Correct.

2 MS. MAINIGI: If could you blow up fourth quarter of
3 2007, that bottom number.

4 Q. Now fourth quarter 2007 was the first quarter that
5 High-Speed Swim Lane within Central Fulfillment was in effect,
6 is that right?

7 A. That's true. It didn't involve all of the loans, but for
8 the Central Fulfillment, yes.

9 Q. And that 5.4 number represents all of FSL for that time
10 period?

11 A. I believe it does, yes.

12 MS. MAINIGI: And just as a frame of reference, Alex,
13 can you bring in the prior three quarters.

14 Q. So 5.4 percent, tell us what number signifies.

15 A. That roughly five out of a hundred loans, or a little more
16 than five out of a hundred loans on a percentage basis would be
17 rated severely unsat or not investment grade.

18 Q. And in the prior -- that fourth quarter 5.4 percent
19 High-Speed Swim Lane was in effect, correct, you said?

20 A. For some of the loans, yes.

21 Q. And High-Speed Swim Lane within Central Fulfillment was not
22 in effect for those prior three quarters, correct?

23 A. That's true.

24 Q. And so all of those quarters the SUS rate is actually
25 higher than the first quarter that Central Fulfillment had the

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O'Donnell - cross

1 High-Speed Swim Lane work flow, is that right?

2 A. That's true.

3 Q. Now let's go ahead to the first two quarters in 2008,
4 please. And actually the first -- let's do the three quarters
5 in 2008. So now I think that what you were highlighting to
6 Mr. Vanderberi was in blue. I think you were highing the 4.4
7 and 4.6 to Mr. Vanderberi in your email to him, is that right?

8 A. I think that's correct, yes.

9 Q. What were you trying to signify by highlighting those
10 numbers in blue?

11 A. That our quality was beginning to come back more toward the
12 target environment based on our change in products and our
13 reintroduction of better controls and a more controlled
14 process.

15 Q. And then in that first quarter of 2008, you have the
16 9.8 percent, correct?

17 A. Yes.

18 Q. And were some of the early indicators of that 9.8 percent
19 what had people concerned about quality in the 2008 time
20 period?

21 MS. NAWADAY: Objection.

22 THE COURT: Sustained.

23 Q. There were some early indicators of the 9.8 percent, right,
24 in the form of initial SUSs?

25 A. Well, yes, the initial SUS rate was much higher than where

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O'Donnell - cross

1 we ended at 9.8 percent.

2 MS. MAINIGI: Your Honor, may I approach?

3 THE COURT: Yes.

4 Q. DX 9, Mr. O'Donnell, is a deck dated July 26, 2007. Does
5 this appear to be one of the design documents for the
6 High-Speed Swim Lane?

7 A. It looks like it, yes.

8 MS. MAINIGI: Your Honor, I would like to ask to get
9 Exhibit 9 admitted into evidence.

10 MS. NAWADAY: No objection.

11 THE COURT: Received.

12 (Defendant's Exhibit 9 received in evidence)

13 Q. Now I take it there were a number of these types of decks
14 that were put together for design of the High-Speed Swim Lane,
15 is that right?

16 A. Yeah, I'm sure there were more than one -- there was more
17 than one, excuse me.

18 Q. And was it a collaborative process in your view?

19 MS. NAWADAY: Objection.

20 THE COURT: I'll allow it.

21 A. It was a cross functional process, so we had representation
22 from a variety of groups within Full Spectrum.

23 Q. Could you take a look at page 2. There's a reference to a
24 design session being held on July 19. Do you see that?

25 A. I do.

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O'Donnell - cross

1 Q. And who was leading the design session?

2 A. I don't know. I don't recall exactly who led the meeting,
3 but the initiative was led by Rebecca.

4 Q. Now it says Mark facilitating, is that Mark Barnett?

5 A. I didn't see that, I'm sorry.

6 I believe that would be Mark Barnett.

7 Q. So that would be Mark Barnett was perhaps leading the
8 meeting?

9 A. Yes.

10 Q. And he was a process engineer, is that right?

11 A. He was.

12 Q. And was it his role to kind of white board this whole
13 process?

14 A. Yes.

15 Q. And you participated in this meeting from the underwriting
16 and discipline point of view?

17 A. I did. I would be the Ed reference there on the top line.

18 Q. And Lloyd, this is Lloyd Sargeant?

19 A. Yes, Lloyd Sargeant was head of production.

20 Q. So he's participating as a head of production, is that
21 fair?

22 A. Yes.

23 Q. And Cliff's role -- that's Cliff Kitashima?

24 A. It is.

25 Q. And what was his role within the High-Speed Swim Lane

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O'Donnell - cross

1 design?

2 A. He also represented underwriting and risk management.

3 Q. And Loren, is that Loren Rodriguez?

4 A. It is.

5 Q. What was his role?

6 A. Loren was head of -- at this time was head of FSL
7 operations, so all the kind of process engineering stuff.

8 Q. And Cheri, Cheri Shine?

9 A. Cheri Shine.

10 Q. What was her role?

11 A. Cheri was kind of a special project manager. She had done
12 a lot of things for the company. She had run -- at one point
13 run the central funding group within Full Spectrum and ran
14 vendor management for title and appraisal companies. I don't
15 recall at this time what her exact role was in the middle of
16 this year.

17 Q. And Jim Kee, what was his role?

18 A. Jim Kee. That's Jim Kee, he was production support. He
19 worked for Lloyd and for Scott Bridges who managed the
20 day-to-day of loan status.

21 Q. And Rick Lang, what was his role?

22 A. Rick was -- Rick worked in FSL operations as well, I
23 believe, as like a project manager type.

24 Q. And Jim M?

25 A. I think that's probably Jim Micali. Jim was also sort of a

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O'Donnell - cross

1 project engineer specialist. He worked for Rebecca.

2 Q. And Patrick A, is that Patrick Aliano?

3 A. It is.

4 Q. What was his role with the design of the High-Speed Swim
5 Lane?

6 A. Patrick worked for Cliff, I think at the time, or Javier in
7 risk management, and he was really -- within Full Spectrum, he
8 was really kind of product and guidelines guru. He came from
9 secondary marketing at Countrywide and he was a great resource
10 for all things product.

11 Q. And Anson Gong worked with Mark Barnett?

12 A. He did. Anson was a project manager.

13 Q. And Chris Baumer?

14 A. I think Chris' role was more around reporting. He also
15 worked for Loren and Rebecca.

16 Q. And let's take a look at page 7, if we could for a second.
17 Can you describe to us what this was in relation to the
18 High-Speed Swim Lane?

19 A. This is a work flow document where it describes process
20 steps, and down in the left-hand side the roles -- the
21 individual roles of who will do what, so references to
22 salespeople and processors and funders, closers.

23 Q. And did you participate in designing this work flow?

24 A. I participated in the team that came up with this, yes.

25 Q. If you take a look at page 13, you see the current work

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O'Donnell - cross

1 follow up top processes built from subprime model and then the
2 HSSL model process is clean sheet design with prime focus.
3 What does that mean?

4 A. It's describing that the current work flow evolved from
5 what at one time was a process built for the higher risk loans,
6 I guess it's fair to say. With this process and this working
7 group we started off kind of with the clean slate, a white
8 board where any idea was open for discussion. Nothing was a
9 bad idea. Any processes people had seen in other companies or
10 within Countrywide we wanted to get it up on the board and talk
11 about it and try to come up with the best options.

12 Q. Now a key feature, as I think we talked about already of
13 the High-Speed Swim Lane work flow, was that loan processors
14 cleared loans to close, correct?

15 A. That was one of the things they did, they managed the
16 entire process all the way through.

17 MS. MAINIGI: May I approach, your Honor?

18 THE COURT: Yes.

19 Q. Defense Exhibit 13, Mr. O'Donnell, is an email from you to
20 several individuals, including Ron Cannon, Cliff Kitashima and
21 Michael Thomas, is that correct? It's dated August 13, 2007.
22 Do you see that?

23 A. I do.

24 MS. MAINIGI: Your Honor I would like to move to admit
25 DX 13, please.

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O'Donnell - cross

1 MS. NAWADAY: No objection.

2 THE COURT: Received.

3 (Defendant's Exhibit 13 received in evidence)

4 Q. Now take a look at the top email, please, and blow up that
5 first paragraph.

6 Mr. O'Donnell, could you read that out loud, please.

7 A. Sure. Couple of notes below. Any new process should not
8 require underwriter involvement. We should be thinking of
9 leveraging underwriters only on critical risk related items.
10 Sign offs should be built to be completed within processing,
11 and only when escalation is required should underwriting be
12 injected into the work flow.

13 Q. And that was an email written by you, is that right,
14 Mr. O'Donnell?

15 A. That's right.

16 Q. Was that the first day the High-Speed Swim Lane pilot was
17 in effect, August 13, 2007?

18 A. Yes.

19 Q. And essentially you're saying that underwriters should only
20 be used for escalation, is that right?

21 A. I am.

22 Q. And that otherwise loan processors should handle all of the
23 conditions and clear to close as it relates to the High-Speed
24 Swim Lane loans, is that correct?

25 A. No.

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O'Donnell - cross

1 Q. Why is that?

2 A. Ron Cannon Ron ran the funding group, so my suggestions to
3 Ron are about escalations from the funders to underwriters, not
4 about the processing of loans. So Ron would have been
5 concerned about loans after they were cleared to close. And
6 there would be instances where an underwriter would have to
7 become involved, but I was saying it should only be on critical
8 risk-related items.

9 Q. So it's your view that underwriters were only needed on the
10 high risk matters at that point in time?

11 A. For loans that were being reviewed for funding, yes. So
12 these would have been loans that Ron -- I guess a couple of
13 things are important. Ron ran the funding process for all of
14 FSL, so this would not be just for --

15 Q. This would have been for all loans within Full Spectrum
16 Lending?

17 A. Yes.

18 Q. Now you discussed quality of grade earlier with
19 Ms. Nawaday, do you remember that?

20 A. I do.

21 Q. And quality of grade could impact compensation, is that
22 fair?

23 A. That was the purpose of it, yes.

24 Q. And is it fair to say that you, as part of the High-Speed
25 Swim Lane, agreed to a temporary suspension of quality upgrade?

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O'Donnell - cross

1 A. As part of the pilot, yes, I did.

2 Q. And you thought that made sense because it was a new
3 process that was being implemented, correct?

4 A. Right. We didn't know if the work flow was going to be the
5 right work flow or not, and so for the pilot I agreed to
6 suspend the QoG.

7 Q. Is it fair to say that your reason for suspending the QoG
8 was people, as they move into new work flows, are going to
9 make -- potentially make mistakes?

10 A. Well, if the pilot -- my reason are for supporting it was
11 because the work flow was what we just talked about, a white
12 board work flow was completely new to Full Spectrum, and none
13 of us knew if it was really going to be effective or not, so it
14 was going to be short duration, small number of loans, and we
15 were asking people to step out of their normal role to take on
16 this responsibility. So I was OK with them not being dinged on
17 their comp if they made mistakes.

18 Q. Now quality of grade still continued to be measured, is
19 that correct?

20 A. Well, we still got the input for quality of grade, so we
21 still knew which loans had been rated SUS.

22 Q. So it continued to be measured, it just didn't affect
23 compensation, is that right?

24 A. I don't remember if it actually -- if the scores actually
25 were calculated or not. I know that we had the audits. We

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O'Donnell - cross

1 could have easily done it.

2 Q. And in fact, is it fair to say that you and Mr. Kitashima
3 got the quality upgrade scores?

4 A. I don't recall if we did get the scores or not, but I know
5 that we certainly did receive the audit results.

6 THE COURT: Counsel, I notice you looking at your
7 watch, and I infer maybe you wanted to stop at this point.

8 MS. MAINIGI: Well, I was about to move to a new
9 section, so I was trying to determine what I could fit in
10 before with resume.

11 THE COURT: Maybe we should take pity on the jury and
12 conclude for the day.

13 MS. MAINIGI: That's fine, your Honor.

14 THE COURT: So ladies and gentlemen, you have so many
15 choices this weekend, you can watch a meaningless Yankees game,
16 you can watch to see if the Giants are capable of winning a
17 game, which seems unlikely, you could see whether the Jets
18 continue to perform at a level that they're unaccustomed to, or
19 you can simply say why is this judge interested in sports when
20 there are so many other interesting things to do in New York.
21 But what you must do is have a very good weekend, and what you
22 should not do is even think about this case. Put it aside, put
23 it out of your mind. Obviously, as you know, don't talk about
24 it or anything like that.

25 We will resume on Monday at 9:30. Now Monday we are

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1 going to only go to 3:30, so it is important at that we start
2 promptly at 9:30.

3 We'll see you then. Have a good weekend.

4 (Jury not present)

5 THE COURT: Counsel, we have a number of things to
6 discuss but why don't we take a five-minute break and then
7 we'll resume.

8 (Recess taken)

9 THE COURT: All right. I think the first item I
10 wanted to mention concerns the proposed mini charge that I will
11 give the jury on Monday after hearing further from counsel.
12 I'll have a draft for you sometime Monday and we'll have
13 further comment. But I note in the submissions from Williams &
14 Connolly that the defendants, although making a proposed
15 instruction, say their preferred position is there be no
16 instruction on the law at this stage of the proceedings.

17 And I'm inclined to overrule that objection. One of
18 the great advantages of being a judge as opposed to a litigator
19 is you get to talk to jurors after the case is over so you can
20 find ways to improve. And for about the first six or so years
21 I was on the bench the main complaint I heard from jurors was
22 that they really didn't know basically what the elements and
23 what the central legalist issues were until they heard the
24 Court's charge at the very end of the case, or at least heard
25 the summations and the lawyers. And sometimes they went

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1 further and said in their opening statements counsel proposed
2 sides that were conflicting or uncertain views of what the
3 legal issues were and we were left to puzzle about them until
4 the case came to an end or near the end.

5 So at that point in time I consulted with Judge Milton
6 Pollack, who, being at that point in time in his mid-90s, had a
7 certain amount of prior experience. And he suggested a
8 preliminary charge which he had used in many cases just giving
9 the bare bones. And so I began doing that, and I have done it
10 ever since. And almost without exception, every jury has told
11 me at the end of the case that they really appreciated it,
12 their only criticism in some cases has been that it should have
13 come even earlier. But on the whole, I like to have the case
14 go at least a few days before that to give the jury some flavor
15 before we present that to them.

16 Now my recollection is that both counsel did, to some
17 extent, describe the law by using that term in their opening
18 statements -- all three, I should say. For example, they all
19 described this as a fraud case. Several counsel, including
20 bank defendants' counsel, if I recall correctly, made
21 reference -- or maybe it was Ms. Mairone's counsel made
22 reference to mail fraud and wire fraud, two terms that the jury
23 would not have been familiar with, and mentioned, I think, as
24 well, that they were criminal statutes, which conceivably gave
25 the jury a misimpression as to what the nature of this case

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1 was.

2 So it's not as if counsel refrained from providing
3 some legal instruction to the jury, but better, they should get
4 it from a more authoritative source. Taken to its logical
5 extreme, the argument made by the banks' counsel in their
6 letter of September 27 would be that we should tell the jury,
7 even when they're just being selected, now this is a case,
8 we're not going to tell you if it's a civil case or criminal
9 case, we're not going to tell you what kind of civil case it
10 is, in fact we're not going to tell you anything about it until
11 the very end, other than it's a case, because anything we say
12 would necessarily not be as perfectly nuanced and full and
13 ideal as the final instruction you'll hear. So ladies and
14 gentlemen, we're going to present you some evidence in some
15 sort of case, have fun. This would not be, I think, a useful
16 way to proceed.

17 So in short, I will give a preliminary instruction on
18 Monday, but I, of course, will consider the drafts of both
19 sides and give you a new draft to look at on Monday that you
20 can then comment on.

21 Yes.

22 MR. ARMAND: Your Honor, we didn't realize potentially
23 that your Honor wanted description of the elements.

24 THE COURT: Yes, you gave me a kind of --

25 MR. ARMAND: This is more a statement of the issues.

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1 THE COURT: Yes, which I'm not going give.

2 MR. ARMAND: Would it be OK if we took another stab at
3 it?

4 THE COURT: Yeah, that's OK. Just give it to me by
5 fax, not by email, because my law clerk may not be here. So
6 get it to me by fax by 5:00 p.m. tomorrow. The fax number is
7 212-805-7935. I mention that so that counsel can check it out
8 on Linked In.

9 Now let's turn to what does have to be decided today.
10 Well, at least that's what you're all telling me, which is this
11 question of the Simantel email and related evidence. So I have
12 the submission from -- or both sides' submissions on the
13 motions in limine, but let me hear further argument starting
14 with the government.

15 MR. ARMAND: Thanks, your Honor.

16 I think there really are two issues from the
17 government's perspective. I think the first one has to deal
18 with the opening of the door on issues of intent, the mental
19 state of the employees of the bank that had that occur during
20 the opening, and statements about them being well intentioned
21 and not wanting to deceive anyone. And I believe there were as
22 well references to the extremely close relationship between
23 Countrywide and Fannie Mae and Freddie Mac, and they knew the
24 mortgages, they did their surveys and they essentially would
25 know what is going on. So we look at the email from

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1 Ms. Simantel, and the other emails surrounding that about the
2 deletion of these loan files that should have been provided to
3 Freddie Mac, and the government's position is they were then
4 lied about.

5 THE COURT: So let me pursue that a little, because
6 this also relates to questions that I may put to the defense.
7 To the extent that the defense presents, either through direct
8 evidence or through circumstantial evidence from which
9 inferences can be drawn about the general intent and practices
10 between the bank Countrywide and Freddie Mac and Fannie Mae and
11 how they dealt with each other, then the argument goes, the
12 government should have the right to counter that by showing
13 what could well be viewed as an intentional lie to -- I can't
14 remember, I think it was Freddie Mac, if I recall correctly.

15 MR. ARMAND: Correct, your Honor.

16 THE COURT: And since the Court has a strong
17 preference for avoiding rebuttal cases, the argument would be
18 if that going to be part of what the defense is going to
19 present, then the government should be permitted to raise it
20 even on their direct case.

21 But let's assume for the sake of argument -- and
22 that's what I want to ask defense about in a minute, but let's
23 assume for the sake of argument they manage to narrow their
24 presentations so that it's, rather than talking about general
25 character of the persons involved or their relationship with

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1 Freddie Mac and Fannie Mae, they talk just about the specific
2 intent with reference to the acts that were done with respect
3 to the Hustle program. Then do you have any other ground on
4 which the email should come in?

5 MR. ARMAND: Yes, your Honor, I think it's bound up
6 together with the issue of the claimed disclosure of the
7 High-Speed Swim Lane to Freddie Mac at the September 2007 site
8 visit. And it is in that visit that the defense claims that a
9 presentation was given to a woman named Lori Biehler, if I'm
10 pronouncing her name correctly. She's now an employee of the
11 bank, but at that time she worked for Freddie Mac. But she is
12 also the person who Ms. Simantel repeatedly lied to in emails
13 about the loan file.

14 So to the extent that Ms. Biehler is being presented
15 and being the recipient of honest disclosures regarding the
16 High-Speed Swim Lane, I think the jury deserves to see the full
17 picture of what was going on at that site visit. In
18 particular, Ms. Simantel, she's not just some ordinary person
19 at the bank, she was the spokesperson for quality control. And
20 this case is about the quality of the loans. She's the person
21 who had the responsibility to self report loans. She was aware
22 from the quality control in March of 2008 the problems with the
23 quality control. She was also the person who was making the
24 final decisions with regard to what loans would be severely
25 unsatisfactory in connection with the sprint incentive, so

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1 someone who is very much at the center of what is going on with
2 regarding quality of the loans.

3 THE COURT: So the argument is that it is, both in
4 terms of timing and the meeting and everything, so intertwined
5 with what was being presented about Hustle that even if it
6 narrowly didn't relate to Hustle, a reasonable juror could
7 infer that the government's arguments that bank was not being
8 honest with Freddie Mac about Hustle in this presentation is
9 corroborated by the fact that -- by admission, in effect, they
10 were not being candid about the other materials they were
11 presenting at this very same meeting. I take it that's more or
12 less the argument.

13 MR. ARMAND: Correct, your Honor.

14 THE COURT: So let me hear from defense counsel.

15 MS. MAINIGI: Yes, your Honor.

16 Your Honor, with respect to the last point, two
17 completely different things. Ms. Simantel is in corporate.
18 She's in corporate QC. The presentation that the government
19 would love the opportunity to get out of this case is the
20 presentation where FSL executives, the FSL executives whose
21 names are heard constantly, even in the first two witnesses,
22 Steve Brent and Cliff Kitashima, when they, FSL, made a
23 presentation to Fannie Mae, which happened to be around the
24 same time period as this particular issue -- and that's the
25 closest relationship that there is -- when they made a

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1 presentation to Freddie Mac disclosing the High-Speed Swim
2 Lane, which cuts to the heart of the fraud here. Because if
3 you disclosed the High-Speed Swim Lane, and the fraud is the
4 High-Speed Swim Lane, according to the government, it's not
5 much of a fraud if it's been disclosed to Freddie.

6 Obviously the government has some secondary arguments
7 ultimately on the substance of it in terms of its impact and
8 was it on a really tiny piece of paper and really small print,
9 and I'm sure that they will make all of those arguments. But
10 their focus on this is to try to get a piece of evidence out of
11 the case that is devastating to their case.

12 Ms. Simantel was asked to get together -- was asked
13 voluntarily to provide loans to Freddie Mac for what was called
14 a subprime review. The loans that she was asked to provide
15 were subprime loans, not prime loans like the High-Speed Swim
16 Lane, there's no dispute that these are not High-Speed Swim
17 Lane loans, there's no dispute that the High-Speed Swim Lane
18 process was not in effect in the wholesale lending division or
19 the correspondent division or any other division.

20 THE COURT: Let me ask you this, this is a meeting --
21 this is a physical meeting, right, not a telephonic meeting?

22 MS. MAINIGI: The meeting that occurred where the FSL
23 executives, your Honor, made presentation to Freddie Mac. Yes,
24 it was a physical meeting. And there was a presentation made
25 which included the High-Speed Swim Lane.

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1 By contrast, in that same time period, your Honor,
2 Ms. Simantel was shepherding together certain loan files that
3 Countrywide was voluntarily providing for the purpose of
4 Freddie Mac subprime review. And it happens that these loan
5 files have nothing to do with the High-Speed Swim Lane, were
6 not owned by Freddie Mac.

7 THE COURT: No, I get that point. My question is a
8 little bit narrower. So is she at this meeting also?

9 MS. MAINIGI: No.

10 THE COURT: And I have got everything here, I know you
11 gave it to me, but I don't seem to have it right in front of
12 me, the email itself.

13 MS. MAINIGI: Sure, I can give you a copy of the
14 email.

15 May I approach, your Honor?

16 THE COURT: Yes.

17 So when she says -- I'll read it as we go along, you
18 can fill me in.

19 This is from Ms. Simantel to Rod Williams. Remind me
20 who he is.

21 MS. MAINIGI: He was her boss, your Honor.

22 THE COURT: Rod, as an FYI, if it comes up as an issue
23 with FHLMC -- which I take it is Freddie Mac.

24 MS. MAINIGI: Right.

25 THE COURT: We did not provide them with eleven loan

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1 files they requested as part of their due diligence review of
2 subprime new originations (August fundings).

3 When she is referring to not providing them, is she
4 referring to some sort of -- was there a meeting in which they
5 did provide the other ones, or was this done electronically or
6 do you know?

7 MS. MAINIGI: I believe, but I can find out for sure,
8 it certainly was not anywhere close to the meeting I described
9 to you earlier, I believe they were just provided
10 electronically.

11 THE COURT: All right. We did not provide all the
12 requested loan files, as our QC group reviewed them before
13 providing copies and determined significant discrepancies in
14 the loans, which included misrepresentation (income, assets and
15 credit) flips and significantly overvalued properties. It was
16 my belief we were better off telling Freddie Mac we hadn't been
17 able to get the loan files for them, as they were not imaged
18 yet, than letting them look at them and determine they were
19 unacceptable quality.

20 Interesting email where she says I thought it would be
21 better to lie, so I did.

22 And it concludes: If you disagree with this, I will,
23 of course, provide them the files. Otherwise, I am going to
24 continue along this path. Thanks.

25 Well, the road to hell is paved with many mistakes.

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1 So let me go back to the government a minute.

2 So this is not at the same meeting, it's not a meeting
3 at all, at least it doesn't appear from this, when she said to
4 them what she said to them. The lie -- I'll characterize it
5 modestly as a lie as opposed to a damn lie or outrageous lie or
6 gross lie, it wasn't at the same meeting.

7 MR. ARMAND: The site visit was over several days. It
8 was arranged in advance. And before the site visit, one of the
9 things they were going to be doing was a loan review. And
10 Ms. Biehler requested a sample of the loans from Ms. Simantel.
11 Ms. Simantel -- her people found that a number of the loans had
12 discrepancies, that they had the flips and other things that
13 made them unacceptable, and they removed those loans from a
14 disk and told them they weren't available, even though they
15 were. And the site reviews, the reviews of the actual loan
16 files provided a disk, and they did the loan reviews on site,
17 and there were lots of meetings that were going on at the same
18 time.

19 THE COURT: But what I say -- I think this is the
20 point that defense counsel is making. OK. Over here in
21 department X you have an employee, maybe a high level employee,
22 but you have an employee, who, during a site visit coming to
23 her about some other kinds of stuff, tells a lie. And one
24 basically looks from the email that she tells a lie because she
25 says to herself oh, my gosh, we can't turn this over right now,

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1 but then she feels sufficiently dicey about it that she tells
2 her boss.

3 Over here -- yes, it's all the same site in some
4 sense, but over here we have the people who are involved in the
5 Hustle program making representations about Hustle, and they
6 may or may not have been misrepresenting or representing the
7 truth. That's, of course, a disputed issue in this case. But
8 what does this other employee's lie about something else
9 logically say, if anything, about the representations made by
10 the Hustle folks?

11 MR. ARMAND: It was the same people who are being lied
12 to. The AMO --

13 THE COURT: It's the same people being lied to, but
14 that's not the point. The relevance, if at all, is to one of
15 two things, both of which you correctly mentioned. It's either
16 as a basis from which one could infer something about being ten
17 other people who are making -- who are involved in the Hustle
18 program, and doesn't sound like it is, or it's a rebuttal to
19 any broader claim that Countrywide -- you should find no
20 liability here because, among other things, Countrywide as a
21 whole was a quality organization that told nothing but the
22 truth, good decent people going to work every day, as I think I
23 heard about 14 times on opening statement. And so Countrywide
24 was operating properly, as an entity, with respect to Freddie
25 Mac and Fannie Mae.

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1 With respect to the first of those two possibilities,
2 the intent of particular people involved in Hustle, it doesn't
3 seem to relate to that. We'll get to the second part in a
4 minute.

5 MR. ARMAND: It's a little broader, your Honor,
6 because Ms. Simantel is the person at Countrywide who was in
7 charge of quality control and was aware of the quality issues
8 in FSL because of the corporate quality control reviews that
9 were done in the first quarter of 2008. And so she is the
10 person who has the responsibility to self report loans that are
11 bad to Fannie and Freddie, and she's aware of high percentages,
12 but she's not turning them over. And this is an example of her
13 doing that. She is manipulating the percentage.

14 THE COURT: Is the first part of what you said going
15 to be part of your evidence in this case, her role vis-a-vis
16 quality control vis-a-vis Hustle?

17 MR. ARMAND: She's responsible for quality control for
18 the entire -- for all four divisions.

19 THE COURT: I understand, but are you going to be able
20 to connect it up with anything she did relating to the Hustle
21 loans that were sold to Freddie Mac and Fannie Mae?

22 MR. ARMAND: Well be able to demonstrate that she knew
23 about the -- obviously she knew about the defect rates, and
24 with regard to the loans that were coming out in Full Spectrum
25 Lending that included Hustle loans.

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1 THE COURT: I assume no one is calling her. How are
2 you putting this in evidence, I'm sorry?

3 MR. ARMAND: It could come in through Ms. Simantel.
4 We have taken her deposition already and have asked her about
5 all of these emails.

6 THE COURT: The person from California who we were --

7 MR. ARMAND: That's Ms. Simantel.

8 THE COURT: That is Ms. Simantel. So you are planning
9 on calling her?

10 MR. ARMAND: Yes, and we would ask her questions about
11 quality control and self reporting and all of those things.

12 MS. MAINIGI: Your Honor, I completely disagree with
13 that on many levels. The only reason that they want to call
14 her, and only thing that they asked her about in two separate
15 depositions is this email. They didn't ask her: Tell us about
16 quality control. Tell us how it worked, tell us how the
17 High-Speed Swim Lane --

18 THE COURT: That doesn't preclude them from doing it
19 here.

20 MS. MAINIGI: With all due respect, your Honor, that's
21 clearly not, I believe, what their intentions are. What they
22 would like is a document that somehow suggests a lie so that
23 they could create the inference that a lie over here is a lie
24 over here.

25 THE COURT: Their strategic motivations are neither

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1 here nor there, the question is whether there's a basis for
2 introducing it in evidence, and that we would get to a 403
3 analysis if necessary, but --

4 MS. MAINIGI: With respect to her specific role, your
5 Honor, which seems to be where we're focused, Ms. Simantel was
6 one of the people in corporate QC. To my knowledge, she's not
7 been reporting anything to Fannie or Freddie that would relate
8 to the High-Speed Swim Lane. She does not make an appearance
9 at all as it relates to the High-Speed Swim Lane. The folks
10 there are multiple folks that have day-to-day contact with the
11 GSEs over the years. She has been one of them, but she
12 doesn't -- there was no duty or obligation or anything on her
13 part to report anything having to do with the High-Speed Swim
14 Lane. All the representations on the High-Speed Swim Lane came
15 out of FSL. There was no one who had any communications with
16 the GSEs related to the High-Speed Swim Lane that was not
17 associated with FSL.

18 (Continued on next page)
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1 THE COURT: Of course, part of the issue in any fraud
2 case is omissions. If a half truth is being stated or if there
3 is a duty to not remain silent remains on the circumstances.
4 So, they're telling me she's the head of quality control.

5 MS. MAINIGI: Well, I'm not sure she's the head of
6 quality control, your Honor. But there are multiple people
7 that were actually involved with quality control. There is no
8 allegation here, your Honor, that the quality control numbers
9 are wrong, incorrect, false in any way. There is no allegation
10 here that the internal corporate QC numbers were even reported
11 to Fannie or Freddie or there was any obligation to report them
12 to Fannie or Freddie. These loans that are the subject of the
13 e-mail are not loans that were owned by Freddie. There is just
14 no relationship whatsoever.

15 THE COURT: So let me pick up on the point you just
16 made and ask the government. You agree that there was no
17 obligation to report these numbers to Fannie Mae and Freddie
18 Mac?

19 MR. ARMAND: Are you addressing the government, your
20 Honor.

21 THE COURT: Yes.

22 MR. ARMAND: There is a duty to self-report defective
23 loans. And so, and --

24 THE COURT: So, let me go back to defense counsel. So
25 they say there is.

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1 MS. MAINIGI: I think they're conflating a few
2 distinct things. Let me go along with them, which I don't
3 agree with.

4 These loans aren't owned by Freddie. There isn't a
5 duty to self-report loans owned by somebody else. This has
6 nothing to do with anything here. With respect to the idea
7 that --

8 THE COURT: Maybe you all are so much closer to the
9 particularities of this case than obviously the Court is. If
10 there is a duty to report defective loans, and if Ms. Simantel
11 is a person of authority who was aware the Hustle loans are
12 defective, and she does not undertake steps to report that, and
13 the government wants to show that that was intentionally so,
14 why, if you assume all those thing, then presumably one could
15 argue that proof that in a parallel contemporaneous situation
16 she purposely withheld defective loan information from Freddie
17 Mac, would be corroborative of the government's assertion that
18 she purposely did not report the defective Hustle loans.

19 MS. MAINIGI: Your Honor, there is no obligation on
20 Ms. Simantel or Countrywide's part to provide anything as it
21 relates to these 11 loans. So the 11 loans that are at issue
22 are not owned by Freddie Mac. So I will go along with you, and
23 I don't agree with that, but I will accept your assumption.

24 THE COURT: I'm saying this is hypothetical. I'm not
25 making any rulings.

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1 MS. MAINIGI: Understood, your Honor. We would of
2 course ask for briefing before such a ruling. But let me go
3 along with you and say, okay, there is a duty to self-report.
4 But the duty to self-report doesn't kick in unless Freddie has
5 entitlement to those loans.

6 In this situation, Freddie came to Countrywide, as it
7 went to a number of lenders, and said hey, we're thinking about
8 buying subprime loans here in 2007. We're thinking that might
9 be a good idea. Can we see some of your subprime loans and see
10 what they look like. These are subprime loans that have
11 already been sold to somebody else in many cases. But they
12 asked for a voluntary production, simply random loan files that
13 were subprime loan files so they could do whatever sort of
14 analysis they wanted to do.

15 We are told by the people that we deposed that there
16 were other lenders that said no. No, you can't. You can't
17 look at our subprime loan files because you don't own them and
18 they're owned by somebody else, or we don't want to show them
19 to you. If you want to buy subprime files from us, great.

20 I think you've got a critical factual issue here.

21 THE COURT: I'm not so sure about that. She might
22 have had a basis for saying we're not going to produce those,
23 because you have no right to them. But what she said was,
24 we're not going to produce them because they're not imaged yet.
25 When that was just a cover up for her real reason.

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1 But, let me ask you, let me go the other point. What
2 about the argument that was at least hinted at in opening
3 statement -- I'm not sure any great doors were opened at that
4 point. But, that Countrywide as an entity basically dealt fair
5 and square with Freddie Mac and Fannie Mae, and that all the
6 people involved were honest, trustworthy people and so forth.
7 If that kind of argument is going to be made, why isn't this
8 responsive to that?

9 MS. MAINIGI: Mr. Sullivan indicates that argument was
10 not made, your Honor.

11 THE COURT: I'll assume that argument wasn't made for
12 the sake of argument.

13 MR. SULLIVAN: I admit to the 14 times you referenced
14 earlier.

15 THE COURT: A total meeting of the minds.

16 My point is if that argument is going to be made, then
17 why doesn't the government have the right to anticipate it?

18 MS. MAINIGI: Your Honor, I agree with you that an
19 argument of the type that you indicated, that Countrywide is a
20 great company, made of great people that would never do
21 anything wrong is in the narrow framework of this case not an
22 argument that we can make.

23 As you correctly point out, we are entitled to make
24 the argument, arguments that relate to the specific intent of
25 people who are involved, I believe you said, with acts done

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1 regarding the High-Speed Swim Lane program. And that's what
2 we're trying to demonstrate. Is those people that Mr. Sullivan
3 was talking about who had no bad -- who had the communication
4 with Freddie and Fannie, and disclosed to them, frankly, that
5 they had changed their processes and they had this different
6 process for originating loans.

7 But the specific intent of those involved with the
8 High-Speed Swim Lane, we agree, is what is at issue in this
9 case.

10 THE COURT: Let me ask both sides one last question,
11 and then we'll let it go. What is the reason this needs to be
12 decided today when, from everything I'm hearing, the
13 admissibility or not of this evidence is substantially
14 dependent on what other evidence comes into the case either on
15 the government's case or on the defense case?

16 Let us assume for the sake of argument that the Court,
17 which said it doesn't normally allow rebuttal cases in I think
18 99.9 percent of the time, that left open of course the
19 .01 percent. Let's assume worst case that this doesn't become
20 admissible until the defense goes, opens some door. Or, short
21 of that, let's assume that it doesn't become admissible until
22 the government has shown in a way that the Court admits more of
23 a role or relevance of Ms. Simantel's own activities or
24 responsibilities than has been shown by any of the evidence
25 before the jury thus far.

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1 Why should I make this decision now? Because she
2 would have to fly from California later than she would have to
3 fly now? So what?

4 MS. MAINIGI: Our view, your Honor, with all due
5 respect, is this is not a close call. This e-mail relates to
6 something that has absolutely nothing to do with the High-Speed
7 Swim Lane whatsoever. Your Honor has narrowed this case.

8 THE COURT: So if it is not a close call, I don't have
9 to decide it now because it will never come in under your
10 approach.

11 And why does the government think I have to decide
12 this now?

13 MR. ARMAND: Your Honor, your Honor doesn't
14 necessarily have to. And I think with regard to Ms. Simantel
15 potentially it does make sense for the government to move back
16 her testimony a little bit and see what else develops. But
17 certainly a big part of why we wanted to call her was to walk
18 through these e-mails, which we do believe go to the very heart
19 of the relationship between Countrywide and Freddie Mac and
20 their truthfulness about the quality of their loans.

21 And I realize that in this other sample, they weren't
22 Freddie Mac's loans, but they undertook to provide them a
23 sample of loans and give them a defect rate and that defect
24 rate was inflated or it was reduced artificially.

25 THE COURT: Forgive me for interrupting.

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1 MR. ARMAND: Sure.

2 THE COURT: You're defining the relationship broadly,
3 I think maybe too broadly. Defense counsel is defining it
4 narrowly, I think maybe too narrowly. But I will have a much
5 better basis for assessing that much later in the case. That
6 has not been really central to anything that's been discussed
7 in the testimony thus far.

8 MR. ARMAND: The government agrees, your Honor.

9 THE COURT: I really think I should defer on this.
10 The only reason for not deferring is that my law clerks will
11 tell me I'm a wimp, but I know that already. So that will be
12 nothing new. So I'm going to defer on this. We'll see how it
13 goes.

14 Anything else counsel needs to raise today?

15 MR. ARMAND: One other issue, your Honor. Mr. Price,
16 we have contacted him, and he indicated that he would like to
17 come. He wanted to check with his wife. This was a couple of
18 days ago, but since then we have not been able to get ahold of
19 him. And we thought if your Honor would not mind -- we would
20 very much appreciate it. Your powers of persuasion hopefully
21 would help to bring him here.

22 MR. SULLIVAN: Your Honor, let me raise a concern
23 about the judge calling witnesses. Maybe you've forgotten how
24 powerful a judge is, and when a judge calls a person, it is a
25 shocking and memorable event. I remember getting a call from a

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1 famous federal judge one time, and you never forget the call
2 because you don't usually get them.

3 What I'm concerned about is what impact does the
4 judge's call on a witness have. Does that make him think he's
5 very special? Does that make him think he's important in the
6 case? He is a different witness? It presents complications,
7 your Honor, that I'd really rather not deal with.

8 THE COURT: Let me stop you for a second. First of
9 all, we have at least one piece of evidence to the contrary of
10 what you are saying because I called Mr. Boland and he then
11 talked with his wife, and we know the result.

12 MR. SULLIVAN: You're batting .500. That's perfectly
13 fine. We didn't make an issue of it.

14 THE COURT: I think I'm batting zero.

15 MR. SULLIVAN: You got one and you didn't get the
16 other. Where were you in the hundred criminal cases where I
17 have wanted the judge to call some witness and help out the
18 defense?

19 THE COURT: You weren't before me.

20 MR. SULLIVAN: Seriously, your Honor. It puts factors
21 into the case which are very troublesome to me. And I don't
22 think the judge should be reaching out and trying to help
23 either the defense or the -- I know you're not doing that.
24 You're seeking the truth.

25 THE COURT: Just to set your mind at rest, I've done

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1 this in other cases, and it's always been in the same
2 situation. Where someone, a witness first informed one party
3 or both parties that he or she was going to be available live.
4 And then for whatever reason, chose not to do that. And the
5 result was the parties were going to put in a deposition, which
6 is never as good as a live witness under the best of
7 circumstances. But where you have an expectation that someone
8 is going to appear live, it's likely to be even less useful.
9 Because as your own counsel pointed out with respect to
10 Mr. Boland, there were questions that weren't put. There was
11 preparations that was made based on his coming into court, etc.
12 That would have been different if there wasn't a reasonable
13 expectation he would appear live.

14 It is not that I call up each and every witness. It
15 is in those circumstances, my experience is when I've called
16 witnesses in those circumstances, sometimes they just have a
17 misunderstanding who is going to pay my travel expenses, can I
18 come at a different time, that's a terrible time. I'm easily
19 able to say to them, oh, no, no, the party that's calling you
20 will pay your travel expenses and we will work around your
21 schedule and all like that. So it is a much more mundane
22 situation.

23 But it seems to me that where there has been a
24 reasonable expectation that someone would come live, that both
25 the jury is assisted from hearing that person live, and the

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1 parties are placed in a much fairer position because of their
2 expectation that he would come live, if he or she then does
3 come live.

4 MR. SULLIVAN: As you know, trial lawyers are a rough
5 and tumble business. They have trouble getting witnesses. We
6 have a deposition. It is not like justice will not be done.
7 We have a deposition of this fellow. By the way, it's
8 interesting to note he is a witness that what does he have to
9 offer anyway. He can do it through deposition. That's my
10 request.

11 MR. MUKASEY: Can I throw one more fact. I think I'm
12 right about this and maybe the government can confirm, I think
13 Mr. Price was always supposed to testify by video.

14 THE COURT: I know. And that's why I didn't talk to
15 him until there was a suggestion that he might be willing to
16 come or something like that.

17 MR. MUKASEY: It was always our understanding --

18 THE COURT: I don't put him in the same category as
19 Mr. Boland, I agree with you on that. But then, what happened
20 was -- I did place a call to the number. I did not reach him.
21 So that was neither here nor there. Then he informed the
22 government, not me, that he was going to come live. Then he
23 informed the government that he wanted to talk with his spouse,
24 a very prudent move in making any decision. And now, he has
25 become unreachable.

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1 By the way, did you reach him through that same
2 number?

3 MR. ARMAND: No, your Honor. We got a new number for
4 him. We tried and we spoke to him once. And at that time we
5 thought that your Honor might actually be calling him again,
6 and so in addition to requesting that he come, we gave him a
7 heads up that the Court --

8 THE COURT: Reaching the broader question that even
9 though I've only done this in narrow circumstances in the past,
10 I'm just thinking aloud, reaching a broader question that
11 Mr. Sullivan raises. I think it is well within the Court's
12 power and discretion to call anyone and suggest that it would
13 be helpful if they would come testify. If, for example, there
14 was a witness who it was clear the jury wanted to hear from,
15 that neither side had chosen to call, but who was not
16 represented by counsel, and if someone is represented by
17 counsel I would always go through their counsel.

18 While the Court of course would not likely do this
19 because of respect for the strategic decisions of both sides in
20 choosing not to call this person, nevertheless, I don't think
21 there is much doubt about the power of the Court to call that
22 person, or if he or she was in the subpoena power of the Court
23 to actually subpoena them and have them brought in to testify.
24 It is akin if you will to several powers. The power the Court
25 has to bring in material witnesses, which is both an inherent

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1 power and a statutory power. It's within the power of the
2 Court pursuant to its overriding function to see that the jury
3 is provided with everything it needs to arrive at the truth.
4 In a criminal case you might argue differently, because truth
5 is not the only issue in a criminal case. In a civil case, it
6 is essentially the only issue.

7 But having said all that, what really drives me more
8 than anything is that a deposition, no matter if it is
9 videotaped, is never the same as live testimony. It is never
10 the same, both because the jury can't evaluate demeanor
11 evidence as well, but also because inevitably, the questions
12 aren't as good and aren't as full, and aren't as explicable.
13 We saw that the other day just in looking at the questions and
14 answers that were put in the Boland deposition. It is never
15 the same. It is not close to the same in many circumstances.

16 So, having rambled on, I will leave it as follows: I
17 will leave it to the government to make a renewed effort to
18 reach Mr. Price over the weekend. If he is not reached over
19 the weekend, I'm inclined to reach out to him in the same way I
20 did previously with all counsel present to hear the
21 conversation some time on Monday. And to encourage him to
22 appear. If defense counsel has case law to the contrary, of
23 course they can present it to me before I do that on Monday.
24 So I'm flagging it for them in advance.

25 Anything else?

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1 MS. MAINIGI: Yes, your Honor. This goes back to the
2 schedule. Because of the uncertainty regarding Mr. Price,
3 because we were told last night that Mr. Ballance is also not
4 coming to trial, we're looking for clarity on what the schedule
5 is looking like over the next several days, Monday, Tuesday.

6 THE COURT: That's a good point.

7 MS. MAINIGI: We're told that the government may want
8 to move straight into experts. We understand schedule changes,
9 we're fine with them, but we are looking for some tiny bit of
10 notice here.

11 THE COURT: The only thing that would bother me is if
12 we don't have another witness ready to go when we finish any
13 given witness. That would be an unfortunate thing because it
14 would end that party's case. Then what would I do with myself
15 for next four weeks. So, let me hear from the government.

16 MR. ARMAND: Yes, your Honor, we determined that we do
17 not wish to call Mr. Ballance and so we would like to proceed
18 to our next witness after that.

19 THE COURT: Who is that?

20 MR. ARMAND: Which would be Lars Hansen who is an FHFA
21 agent who can say what some of the data would show. That would
22 be a relatively quick witness we think. After that we would
23 like to present some of our experts. We thought we would be
24 moving more quickly and they're here and they cost money so we
25 would let like to get them on.

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1 THE COURT: Here's where we stand. That all sounds
2 fine. It sounds like from the estimates that the parties
3 previously gave, that the cross and redirect of Mr. O'Donnell
4 will occupy most of our time on Monday. Then you can have the
5 short witness thereafter. If at that point we're not yet to
6 3:30, because Monday is the day that I give a speech so we have
7 to end at 3:30. Then I would excuse the jury a little bit
8 earlier to do any Daubert hearing that has to be done on those
9 experts. If not, we'll do the Daubert hearing -- well, we can
10 talk about whether we want to do that after my speech is over,
11 I can come back like 8 o'clock or something like that. I know
12 that's what you all would like to do. Or maybe come in early
13 the following morning and the jury come in at 10 and maybe do
14 the Daubert hearing starting at 8:30 or something like that on
15 Tuesday morning so we don't detain the jury. But, I have no
16 trouble with that order.

17 MR. ARMAND: Thank you, your Honor. In terms of the
18 Daubert hearings, is there a particular time limit that your
19 Honor has in mind of what we should anticipate in terms of how
20 much testimony we should be presenting to your Honor on their
21 opinions?

22 THE COURT: Because of the motions in limine, I think
23 these are just going to be primarily questions put by the
24 Court, you don't need to do any preparation. Well, you may
25 want to do some, but I am going to question the witness.

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1 MR. ARMAND: Okay.

2 THE COURT: I will then allow defense counsel to put
3 any additional questions they want within reasonable time
4 limits. And then I'll allow you to put any further questions
5 that you want. But I think most of the questioning will be
6 done by the Court.

7 MR. ARMAND: Very well. Thank you, your Honor.

8 THE COURT: Anything else?

9 MS. MAINIGI: Nothing from us.

10 THE COURT: Very good. Thanks so much to everyone.
11 I'll look forward to seeing you at 9:30 on Monday.

12 (Adjourned until September 30, 2013, at 9:30 a.m.)
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